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Equity Pleader's

ASSISTANT.

CONTAINING

A great Variety of PRECEDENTS, of

Bills.
Answers.

Pleas
Replications.

Demurrers.
Decrees.



METHODICALLY ARRANGED.

READINGS AND OBSERVATIONS,

UNDER EACH RESPECTIVE HEAD.

by
Maynard Chamberlain Walker.

IN TWO VOLUMES.

VOL. I.

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P R E F A C E.

*W*HILE the Press, every Term, teems with Precedents of legal Pleadings, few are to be met with to regulate the Proceedings in a Court of Equity.—The Compiler of this Work trusts therefore, that it will be found useful to the Members of that Society to which he has the Honor to belong,—and to whom to be serviceable, would give him the sincerest Happiness.

He has heard however, that many have inquired—“Who the Compiler is?” and seem to think that the Merits of this Production depend in a great Measure, upon the Opinion they entertain of the Editor,—to such he Answers, that the Business of a Compiler is very different from that of an Original Author—it requires little more than common Sense and proper Diligence.—The Work will best speak for itself; if it is useful it must be of Advantage, let the Editor be ever so insignificant—and if it is useless, the most illustrious Name cannot afford it intrinsic Value. The present Publication certainly contains a greater Variety of Precedents than any at present extant, and will be found to have every Thing useful which has been heretofore published, with the Addition of many new ones.—The whole therefore, is recommended as an instructive Companion to the Study of the Lawyer, and the Desk of the Attorney.

4th May, 1796.

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Bills in Chancery.

A Bill brought by a Mortgagee against the Mortgagor to discover Incumbrances.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord High Chancellor of Ireland.

HUMBLY complaining sheweth unto your Lordship, your suppliant and daily orator, B. W. of in the county of K. esq. That T. S. of in the said county, gent. having great occasion for the sum of five hundred pounds, did on or about the third day of May last, apply to your suppliant to lend him the said sum of five hundred pounds, and at the same time proposed giving your suppliant good security in land for the same, if he would lend him the said sum of five hundred pounds, for one whole year, at the rate of six pounds per cent. assuring your suppliant that he then was seized of a good, perfect and indefeasible estate, to him and his heirs for ever, of a tenement or farm, called Bush-farm, in the said county of K. of the yearly value of one hundred pounds, or thereabouts, and that he would convey and assure the same to your suppliant and his heirs, for the repayment of the said sum of five hundred pounds, with the interest thereof, and the more to prevail upon your suppliant to lend him

B

the

the same, the said T. S. did affirm to your suppliant, that the same would be a good security for the repayment of the said sum of five hundred pounds, with the interest thereof, inasmuch as the same was free of all incumbrances, by him the said T. S. or any of his ancestors, had, made, done, committed or suffered. Your suppliant further sheweth, that relying on the honesty and integrity of the said T. S. and believing the said tenement and farm to be free from all incumbrances, and therefore a good and sufficient security for the repayment of the said sum of five hundred pounds, with the interest thereof, your suppliant was induced to lend, and did actually lend to the said T. S. the said sum of five hundred pounds, sterling, and your suppliant likewise sheweth unto your lordship, that according to his agreement for securing the repayment of the same, the said T. S. by his deed indented, bearing date on or about the twentieth day of said month of May, did convey and assure unto your suppliant and his heirs, the aforesaid farm and tenement, with its appurtenances in the said county of K. under a promise and condition nevertheless in the said deed contained, that if the said T. S. his heirs, executors, administrators or assigns, should well and truly pay, or cause to be paid unto your suppliant his heirs, executors, administrators or assigns, the sum of five hundred pounds, sterling, with lawful interest for the same, at or upon the twentieth day of August next, ensuing the date of the said indented deed, that then and from thenceforth, the said conveyance and assurance of the said farm and tenement, with the appurtenances and all and every the covenants therein contained, should be utterly void and of none effect, as if the same had never been had or made, as in and by the said indented deed, or one part thereof, in your suppliant's possession ready to be produced, and to which your suppliant for greater certainty craves leave to refer, may more fully and at large appear. BUT NOW SO IT IS, may it please your lordship to be informed, the said T. S. combining and confederating to and with divers other persons, to your suppliant at present unknown, but whom when discovered, your suppliant prays he may be at liberty to make parties to this his bill of complaint, with apt words to charge them, contriving how to injure your suppliant in the premises, your suppliant has lately discovered that the said T. S. hath made divers secret estates of the said farm and tenement, with the appurtenances, or some part thereof, to persons unknown to your suppliant, and
hath

hath entered in divers statutes and recognizances, whereto the said farm and premises so assured to your suppliant and his heirs as aforesaid, is and are liable, and so that by such secret and clandestine fraudulent conveyances, your suppliant's conveyance and assurance so made to him, may in a short time be of no force or effect, unless he shall be speedily redressed by this honorable court; **ALL WHICH ACTINGS AND DOINGS** of the said T. S. are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your suppliant; in tender consideration whereof, and inasmuch as your suppliant is remediless in the premises by the strict rules of law, and only relievable in a court of equity, where he will be entitled to the oath of the party, and where matters of fraud are properly cognizable; *to the end* therefore, that the said T. S. and his confederates when discovered, may on their respective corporal oaths, to be by them taken on the holy Evangelists, true, full and perfect answers make to all the matters and things herein charged and set forth, not only from their respective knowledge, but also what they have heard and do believe respecting the same, and whether the same be true, or in what they vary from the truth, and that as fully as if the same were herein again repeated, and they interrogated thereto, paragraph by paragraph, and particularly that the said T. S. may set forth and discover whether he hath not encumbered by some ways or means, the tenements and premises so conveyed to your suppliant, or any part thereof, and how, and in what manner, and to whom, and for what consideration, or whether W. S. his father, did at any time before his decease, or any of his ancestors, incumber the same, or any part thereof, and how, and in what manner, and that your suppliant may be relieved in all and singular the premises, according to equity and good conscience, and the nature and merits of his case as to your lordship may seem meet. May it therefore please your lordship, &c.

Pray subpoena

and general relief, &c.

A common

A common Bill of foreclosure.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship,
your suppliant and daily orator, J. K. of the city of
Dublin, gent. That J. P. of the said city, esq; being
seized in fee, or otherwise well and sufficiently possessed of,
and entitled unto one messuage or tenement, situate, lying
and being in Francis street, in the said city of Dublin, did
by indenture of lease, bearing date on or about the first
day of March, which was in the year of our Lord, one
thousand seven hundred and seventy five, and made be-
tween the said J. P. of the one part, and T. L. of the
other part, for and in consideration of the sum of six hun-
dred pounds, to him in hand paid by the said T. L. at the
time of the execution of the said lease, the receipt whereof
is thereby acknowledged, and for and in consideration of
the rents and covenants in the said lease mentioned, demise,
grant, set and to farm let, unto the said T. L. all that
[here describe the premises as in the lease] to have and to
hold to the said T. L. all and singular the said demised
premises, with the appurtenances, unto the said T. L. his
executors, administrators and assigns, from the twenty
ninth day of September then last past, for and during the
full end and term of sixty one years, from thence next
ensuing, fully to be compleated and ended, as by one part
of the said indenture of lease in your suppliant's hands,
ready to be produced and proved as this honorable court
shall direct, reference being thereunto had, may more
fully and at large appear. Your suppliant further sheweth,
that the said T. L. under and by virtue of the said demise,
entered into and became possessed of the said messuage or
tenement, with the appurtenances, and being so possessed
and having occasion for a sum of one hundred pounds, he
applied to your suppliant to lend him the same, and in
order

order to secure the repayment thereof with interest, at the rate of six pounds by the year, he proposed to assign to your suppliant, the said so demised premises, and also to give his bond, with warrant of attorney, to confess judgment thereon, as and for a collateral security, and your suppliant having accordingly agreed to lend him, the said T. L. the said sum of one hundred pounds, he the said T. L. by indenture, bearing date on or about the third day of April, which was in the year of our Lord, one thousand seven hundred and seventy six, and made between the said T. L. of the one part, and your suppliant of the other part, did in consideration of the sum of one hundred pounds, sterling, then actually advanced by your suppliant to the said T. L. sell, assign, transfer and set over unto your suppliant, his executors and administrators, all his the said T. L.'s right, title, interest, property, claim and demand, in and to the said messuage and tenement, with the appurtenances, so as before demised to him, for and during all the rest and residue of the said term, then to come and unexpired, in which said indenture there is a proviso contained, that if the said T. L. his executors, administrators or assigns, should well or truly pay, or cause to be paid to your suppliant, the said sum of one hundred pounds, with legal interest for the same, at the rate of six pounds by the year, at or upon the first day of September, which should be in the said year of our Lord, one thousand seven hundred and seventy six, that then and from thenceforth, the said indenture of mortgage, and every clause therein contained, should become void and of none effect; and your suppliant further sheweth, that the said T. L. did by said indenture, covenant with your suppliant, for himself, his executors and administrators, to pay your suppliant, his executors or administrators, the said sum of one hundred pounds, together with legal interest for the same, at the rate of six pounds by the year, on the said first day of September, which should be in the year one thousand seven hundred and seventy six, and did also execute his bond with warrant of attorney, to confess judgment thereon, in the penal sum of two hundred pounds, conditioned for the payment of the said sum of one hundred pounds, with interest, at the rate of six pounds by the year, on the said first day of September, in the year aforesaid, which bond and warrant bear equal date with the date of the said indenture of mortgage, as by the said indenture of mortgage, and the said bond and warrant of attorney, in your suppliant's

ant's hands, ready to be produced and proved as this honorable court shall direct, reference being thereunto had, may more fully and at large appear. Your suppliant further sheweth, that there is now justly due and owing to your suppliant on the foot of the said several securities, the sum of one hundred pounds being the principal sum which your suppliant actually and bona fide lent and advanced to the said T. L. at the time he executed the said deed of mortgage, and the bond and warrant of attorney aforesaid, and also a further sum of eighteen pounds, as and for the interest thereof, being at the rate of six pounds by the year for three years, and your suppliant hoped and expected, the said T. L. would have paid the same without trouble or litigation, and for that purpose your suppliant not only applied himself to the said T. L. but also caused several applications to be made to him, in an amicable manner, to pay the same. BUT NOW SO IT IS, may it please your lordship to be informed, the said T. L. combining and confederating to and with divers other persons, to your suppliant at present unknown, but whose names when discovered, your suppliant prays he may be at liberty to add and make them parties to this his bill of complaint, with apt words to charge them, contriving how to injure and defraud your suppliant of his just debt, hath actually declined and refused to pay the same, or any part thereof, and hath put off your suppliant from time to time, with many frivolous excuses and pretences; ALL WHICH ACTINGS AND DOINGS of the said T. L. and his confederates, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your suppliant; *in tender consideration whereof*, and inasmuch as your suppliant is remediless in the premises, by the strict rules of law, inasmuch as your suppliant's witnesses who could prove the same, are either dead or dispersed in foreign parts beyond the seas, and that your suppliant now is only relievable in a court of equity, where he will be entitled to the oath of the party, and inasmuch as the said premises so mortgaged to your suppliant, are become a scanty security for the sum now due to him. TO THE END therefore, that the said T. L. may upon his corporal oath, to be by him taken on the holy Evangelists, true, full and distinct answers make to all and singular the premises, and that as fully and particularly as if the same were herein again particularly repeated, and he interrogated thereto paragraph by paragraph, and that he may set forth and discover, whether the said J. P. being seized

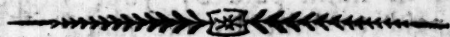
or

or otherwise possessed of some good and sufficient title in and to the premises before mentioned, did not make such lease to the said T. L. of the date and import above set forth, or of any other, and what date and import; did not the said T. L. under and by virtue of the said lease enter into the possession of the said messuage or tenement, with the appurtenances, or how otherwise; did not the said T. L. at the time before mentioned, or at any other, and what time, apply to your suppliant to lend him a sum of one hundred pounds, or any other, and what sum, and did not your suppliant lend him the same; did not the said T. L. in order to secure the repayment of the said sum of one hundred pounds, with legal interest, at the rate of six pounds by the year, duly make and execute to your suppliant, the said indenture of mortgage of the date and import herein before mentioned, or of any other, and what date and import, and did he not execute a bond and warrant of attorney to confess judgment thereon, bearing equal date with said indenture, in the penal sum of two hundred pounds, conditioned for the payment of the sum of one hundred pounds, together with legal interest, at the rate of six pounds by the year, on any and what day, and is not said day long since passed, or how otherwise; is there not the sum of one hundred and eighteen pounds, justly due and owing to your suppliant on the foot of the said several securities, or what sum is due to your suppliant on account thereof, and that the said T. L. may before he answers, view in the hands of your suppliant's fix clerk, if he answers in Dublin, or in the hands of one of your suppliant's commissioners, if he answers in the country, the said indenture of mortgage, and also the said bond and warrant of attorney, to confess judgment thereon, and that he may indorse his name thereon respectively, and set forth in his answer, that he hath so done, and that he may discover whose names, and of whose hand writing the names of the executing parties to the said several securities respectively are; and that the said T. L. may come to an account with your suppliant, touching the sum due to him on the foot of the said securities, and may be decreed to pay your suppliant by a short day, such sum as shall upon such account appear to be due and owing to your suppliant for his principal, interest and costs, or in default thereof, that the said mortgaged premises may be set up to be sold by the proper officer of this honorable court, and that your suppliant may be paid out of the money arising from
the

the sale thereof, the sum appearing due to him, for his principal, interest and costs, and that the said T. L. may in such case be absolutely foreclosed of and from, all and all manner of equity of redemption of said mortgaged premises, and every part and parcel thereof, and that your suppliant may have all such other and further relief in the premises, according to equity and good conscience, and the nature and merits of his case, as to your lordship may seem meet. May it therefore please your lordship, to grant unto your suppliant, his Majesty's most gracious writ of subpcena, issuing out of this honorable court, to be to the said T. L. directed, commanding him, on a certain day, and under a certain penalty, therein to be limited, personally to be and appear before your lordship, in his Majesty's high court of Chancery, then and there, upon his oath, a true, perfect answer to make to all and singular the premises, and further to stand to and abide such further order, direction and decree, in the premises, as to your lordship shall seem meet, and as shall be agreeable to equity and good conscience, and your suppliant as in duty bound, shall ever pray.



Bill to foreclose the Equity of Redemption of a Mortgaged Estate.—The Mortgage being made by Tenant and Wife, and a Covenant to levy a Fine to the Mortgagee and his Trustee, the Trustee having died before filing the Bill.



To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord High Chancellor of Ireland.

HUMBLY complaining sheweth unto your lordship, your suppliant and daily orator William Todd, of Dunshaghlín, in the county of Meath, esq; that in and about the year of our Lord, one thousand seven hundred and seventy three, James Williams of Naas, in the county of Kildare, gent. being, or pretending to be, seized in fee, or of some other good and sufficient estate of inheritance, of and in the manor, messuages, farms, lands, tenements and hereditaments, herein after mentioned, and having occasion for money, did apply to your suppliant, and desire your suppliant to lend him, the said James Williams, the sum of one thousand pounds, and in order to secure the repayment of the same with interest, after the rate of five pounds by the hundred by the year, did propose to mortgage to your suppliant, the said manor, &c. which he did affirm to your suppliant were free from all prior incumbrances, save a term of five hundred years in some part of the same premises, which (as the said James Williams informed your suppliant) was then vested in Henry Thompson of Kildare, in the county of Kildare, esq; in trust for the said James Williams, his heirs and assigns, and to be disposed of and assigned, as he or they should direct, and your suppliant further sheweth unto your lordship, that your suppliant did comply with the said request of the said James Williams, and did accordingly lend him the said sum of one thousand pounds, and for securing the repayment thereof with interest as aforesaid, by indentures of lease and release, bearing date respectively the fourth

C

and

and fifth days of March, one thousand seven hundred and ninety two, and made between the said James Williams, by the name and description of James Williams of Naas, in the county of Kildare, gent. and Mary Williams otherwise Nugent his wife, of the one part, and your suppliant and one Francis Turner of Clonegal, in the county of Wicklow, esq. of the other part; the said James Williams by said deed of release, for and in consideration of the sum of one thousand pounds of lawful money of this realm, to him in hand paid by your suppliant, and of five shillings paid to him by the said F. Turner (which sum of one thousand pounds, your suppliant's charges, was really and truly paid by your suppliant to the said James Williams) did grant, bargain, sell, release and confirm unto your suppliant and the said Francis Turner, (in their actual possession then being, by virtue of the said indenture of lease for a year, and by force of the statute for transferring uses into possession) and to their heirs and assigns, all that the manor of T. with its rights, members and appurtenances in the county of Louth, and all messuages, barns, buildings, edifices, stables, yards, gardens, orchards, lands, tenements, woodgrounds, commons, common of pasture, demesne, lands, courts baron, courts leet, perquisites and profits of courts, fines, heriots, reliefs, amerciaments, rents, services, escheats, waifs, estrays, deodands, felons' goods, warrens, heaths, mines, moors, marshes, patronages and benefices of churches and chapels, advowsons, franchises, privileges, profits, commodities, advantages, emoluments, jurisdictions and hereditaments whatsoever, to the said manor belonging or appertaining, or reputed to belong or appertain thereunto; and also all that messuage or tenement, with the appurtenances situate standing and being in Dundalk, in the said county of Louth, on the east side of the said green there; and also all that orchard and close of pasture thereunto adjoining and belonging, and also all those several pieces or parcels of arable land, meadow and grass ground and lot grass, with their appurtenances lying dispersedly within the common fields, liberties, meadows, parishes, boundaries and precincts of Drumfin and Drimna in the said county of Louth, containing by estimation fourscore acres; and also those several pieces or parcels of arable land, meadow and pasture, or grass ground and lot grass, with their appurtenances, lying and being dispersedly within the common and open fields, liberties, meadows, parishes, precincts

precincts and territories of and aforesaid, containing by estimation forty three acres, thentofore in the tenure or occupation of S. H. and W. R. their assignee or assignees; and also all that messuage, tenement or farm house, with the appurtenances situate, standing and being in Dundalk aforesaid, and thentofore in the possession of Thomas Knox, yeoman, (a messuage or tenement there or then, late of T. P. on the northeast part thereof, and the messuage or tenement of the said James Williams, on the southeast part thereof) which said last mentioned messuage or farm house, was thentofore purchased by the said James Williams, of and from one John White, and all other the messuages, lands, tenements and hereditaments whatsoever, of him the said James Williams in possession, reversion or remainder, situate, lying or being in the parishes of and aforesaid in the said county of L. or any of them, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of him the said James Williams, of, in, and to the same manor, lands and premises, and every part and parcel thereof, to hold the said manor, messuages, farms, lands, tenements, hereditaments and premises, and all and singular other the premises mentioned, to be thereby granted and released as aforesaid, with their and every of their appurtenances unto your suppliant and the said Francis Turner, their Heirs and assigns, to the only proper use and behoof of your suppliant and the said Francis Turner, their heirs and assigns for ever: nevertheless, as to the estate of the said Francis Turner, and his heirs in trust for your suppliant, his heirs and assigns, subject nevertheless to a proviso or condition for redemption in the said indenture of release contained, if the said C. D. his heirs, executors, administrators or assigns, or any of them should well and truly pay, or cause to be paid unto your suppliant, his executors, administrators or assigns, at, or in the in the parish of the said county of L. the full sum of of lawful, &c. at or upon the day of next ensuing the date thereof, and now long since past, without any deduction whatsoever in manner set forth in the said indenture of release; and the said James Williams did, by the said indenture of release, covenant and agree to and with your suppliant and the said Francis Turner, that he and the said M. his wife, should and would before the end of Easter term next ensuing, the

the day of the date of the said indenture of release, acknowledge and levy (and which was accordingly acknowledged and levied) in due form of law, one fine sur connissance de droit come ceo, &c. to your suppliant and the said Francis Turner, and the heirs of your suppliant, of the said manor lands and premises, subject to such redemption as aforesaid: And the said James Williams did further covenant and agree, that the said manors, messuages, farms, lands, hereditaments and premises thereby released as aforesaid, were free from all incumbrances, except other than the said term of five hundred years, of and in the said manor and premises, or the greatest part thereof, then vested in the said Henry Thompson, *in trust* for the said James Williams and his heirs, and to be disposed of and assigned as he or they should direct, which term the said James Williams did thereby direct and declare the said Henry Thompson, his executors and administrators, should stand possessed of and interested in, *in trust* only for your suppliant and the said F. Turner and their heirs, to attend the inheritance of the same premises, subject to such redemption as aforesaid, with a covenant, that in case of failure of payment of the sum of _____ according to the said proviso, your suppliant and the said F. T. might enter upon and enjoy the said mortgaged premises, and the rents and profits thereof, without any interruption of the said James Williams, his heirs or assigns, or any other person whatsoever [*here set forth the covenant for further assurance verbatim*] as in and by the said indentures of lease and release, duly executed by the said James Williams and M. his wife, now in your suppliant's custody, and ready to be produced as this honorable court shall direct, and to which your suppliant, as also to the record of said fine, for greater certainty refers himself, may more fully and at large appear; and your suppliant charges that the said sum of _____ or any part thereof, was not paid to your suppliant, or any other person on his account, according to the said proviso in the said indenture of release contained, at the time therein mentioned, or at any other time: and your suppliant further sheweth unto your lordship, that the said James Williams having a further occasion for money, sometime in or about the end of February or March, 1794, again applied to your suppliant to lend him the further sum of five hundred pounds, and in order to secure the repayment of the same with interest, after the rate of five pounds by the hundred by the year, offered to charge the said mortgaged premises therewith

therewith, which your suppliant consented to, and accordingly did advance, lend and pay to the said James Williams, the said sum of five hundred pounds, and for securing the repayment thereof with the interest as aforesaid, by an indorsement made upon the back of said indenture of release, bearing date the first day of April, 1794, reciting that the said principal sum of one thousand pounds, remained wholly due and unpaid, but that all interest for the same was fully paid and satisfied to the day of the date thereof; and further, reciting (and which your suppliant expressly charges to be true) that the said James Williams, by his bond or obligation, bearing even date with the said indorsement, became bound to your suppliant in the penal sum of conditioned for the payment of the said sum of with interest for the same after the rate of for every hundred pounds, on the first day of September then next ensuing: it is by the said indorsement witnessed, that for better securing the payment of the said sum of with interest for the same after the rate of per cent. per ann. to your suppliant, his executors, administrators and assigns, to the said James Williams, for himself, his heirs, executors and administrators, and for every of them, did thereby covenant, promise and agree to and with your suppliant, his executors, administrators and assigns, and every of them, that the said sum of and interest after the rate aforesaid, to be computed from the day of the date thereof, was and should be placed, charged and secured in and upon the manor, messuages, farms, lands and hereditaments, comprised in the said indenture of release, and that the manor, messuages, farms, lands and hereditaments, with their and every of their appurtenances in the said indenture mentioned, to be released to your suppliant and his heirs, should remain to your suppliant, his executors, administrators and assigns, as a security as well for the said sum of and interest for the same, after the rate of five pounds for every hundred pounds by the year, to be accounted from the day of the date thereof, as for the said sum of secured by the said indentures of release and the growing interest thereof, after the rate of five pounds for every hundred pounds by the year, and that the said manor, messuage, farms, lands, tenements and hereditaments, or any of them, or any part thereof, should not be redeemed or redeemable, until not only the said and the growing interest thereof as aforesaid, but also the said then advanced

advanced and lent, and the interest thereof as aforesaid, should be fully paid and satisfied to your suppliant, his executors, administrators or assigns, as in and by the said indorsement on the back of the said release, and the said bond duly executed by the said James Williams, and to which your suppliant for greater certainty refers himself, may more fully and at large appear; and your suppliant further sheweth unto your lordship, that the said sum of or any part thereof, hath not been paid to your suppliant, neither was the said sum of or any part thereof, paid to your orator, according to the condition in the said in part recited bond, at the time therein mentioned, or at any time since, but the said two several sums of one thousand pounds and five hundred pounds, are now due and owing to your suppliant, together with a great arrear of interest on the said several sums, after the respective rates aforesaid; And the said F. Turner being dead, the estate and interest in the said mortgaged premises, is now become absolute in your suppliant and his heirs, and your suppliant well hoped, that the said James Williams, would either have paid your suppliant the said several sums of one thousand pounds and five hundred pounds, and the interest thereof respectively, at the rates aforesaid, or would have suffered your suppliant to have peaceably and quietly held and enjoyed the said premises, and for that purpose, your suppliant hath frequently and in a friendly manner, applied himself to the said James Williams, and requested him to pay the said several sums of one thousand pounds and five hundred pounds, and the interest due for the same respectively, or else that he would quietly and peaceably deliver up possession to your suppliant, of the said mortgaged premises, together with all deeds, evidences, writings, muniments, court rolls, rent rolls, and minutes of courts, relating to or concerning the same, and to release all his right, title and equity of redemption of, in and to the same premises, to your suppliant and his heirs, the said J. W. well knowing, as your suppliant charges the truth to be, that the said premises are a very slender and scanty security for the principal and interest now due to your suppliant thereon: and your suppliant well hoped the said J. W. would have complied with such reasonable request of your suppliant, as in justice and equity he ought to have done. BUT NOW SO IT IS, may it please your lordship, that the said J. W. combining and confederating himself, to and with the said H. T. and

and divers other persons, at present unknown to your suppliant, whose names, when discovered, your suppliant prays may be made parties hereto, with proper and apt words to charge them, how to injure and aggrieve your suppliant in the premises, and to defraud him of the said principal monies and interest due to him, the said H. T. sometimes gives out and pretends, that the said premises were mortgaged by the said J. W. to the said H. T. for the said term of five hundred years, for securing to him some very considerable sum of money; and that at the time such mortgage was made to your suppliant as aforesaid, he the said J. W. had only the equity of redemption of the same, whereas your suppliant expressly charges (as the truth really is) that no money was due to the said H. T. on such term, but that the said H. T. is seized of the term of five hundred years, and his name made use of only as a trustee, and the said term is now vested in him, in trust for your suppliant and his heirs, to attend the inheritance of the said premises; nevertheless the said H. T. refuses to let your suppliant bring an ejectment in his name, for recovery of the premises comprised in the said five hundred years term; and at other times the said J. W. pretends that he hath confessed judgments, statutes and recognizances, to several persons, for several considerable sums of money, and made several other grants, conveyances and secret incumbrances, which will affect the said premises, prior to your suppliant's title to the same, but refuses to discover the same, or to whom he hath so sold, mortgaged or incumbered the premises as aforesaid, or the respective considerations thereof, or the persons to whom he hath confessed such judgments, statutes or recognizances, and for what sums and what consideration, so that your suppliant cannot proceed at law for recovery of the said mortgaged premises, the said J. W. threatening, in case your suppliant proceeds at law, to set up the said incumbrances, and the said trust term of five hundred years, in the said H. T. as a bar to your suppliant's proceedings, all which they pretend are prior to your suppliant's said mortgage, whereas your suppliant charges, that such conveyances, mortgages or other incumbrances (except the said trust term) are not prior to your suppliant's said mortgage (if any such there be) or if any of them are prior to your suppliants said mortgage, the same are voluntary and fraudulent, and made without any consideration really and truly paid, and such judgments, statutes and recognizances,

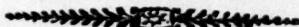
zances, were not for the payment of any just debt, but without any consideration, and voluntary, and contrived on purpose to defraud the just creditors of the said J. W. **ALL WHICH ACTINGS AND DOINGS** of the said confederates are contrary to equity and good conscience, and tend to your suppliant's manifest wrong and injury; *in tender consideration whereof*, and forasmuch as your orator hath no means to discover, what incumbrances there are upon the said mortgaged premises, or can foreclose the equity of redemption thereof, but in a court of equity, where matters of this nature are properly cognizable, and the rather for that your suppliant's witnesses, who could prove the truth of all and singular the premises, are either dead, or gone into parts beyond seas entirely unknown to your suppliant, **TO THE END THEREFORE**, that the said J. W. and H. T. and their confederates (when discovered) may upon their several and respective corporal oaths, true, full and perfect answers make, to all and singular the premises, as fully and particularly as if the same were herein again repeated, and they interrogated according to the best of their respective knowledge, information or belief, and more particularly, whether the said J. W. was not in or about the year or at some other, and at what time, and when seized in fee, or of some other, and what estate, of and in the manor, messuages, farms, lands, tenements, hereditaments and premises herein before mentioned, or some, and which of them, and whether he did not apply to your suppliant to borrow the sum of one thousand pounds, or some other, and what sum of money, and propose to secure it with interest as aforesaid, in the manner herein before mentioned, or in any other and what manner, and whether your suppliant did not accordingly advance and lend to him the said J. W. the said sum of a thousand pounds, and whether the said J. W. and M. his wife, did not execute such indentures of lease, release, bearing date respectively the and days of or some other, and what indentures of mortgage of the said premises to your suppliant, or of any other, and what date, and whether the said trust term of five hundred years, was not thereby declared and agreed, or how otherwise intended to be vested in the said H. T. in trust for your suppliant and his heirs, to attend and wait upon the inheritance of the said premises, or for any other, and what trust or purpose, and whether J. W. did not again some time in the year and

apply to your suppliant, to borrow the further sum of or some other, and what sum of money, and whether your suppliant did not advance and lend to the said J. W. the said sum of and whether, for securing the repayment thereof with the interest as aforesaid, the said J. W. did not execute such bond of such date, as is before set forth, or some other, and what bond, of the same, or any other, and what date, and whether he did not execute such indorsement on the back of the said release, as is before set forth, bearing date the day of or some other, and what indorsement or instrument in writing of the same, or such like date, tenor, purport or effect, and may admit the said several indentures of lease and release, dated the day of and the said bond and indorsement made on the back of the said release, dated the day of and the payment of the several considerations thereof, to be in the same manner they are herein before respectively set forth, or may set forth, wherein they materially differ, and may set forth, whether the said several sums of and or any part of either of them hath at any time, and when, been paid by any person, and by whom, to your suppliant, and may set forth, how much is due to your suppliant, for principal and interest, on his said several securities, and may set forth, what incumbrances there are upon the said mortgaged premises, and when, and by whom the same were charged or incumbered, and who claim the same respectively, and may set forth the nature, kinds and qualities thereof, and whether the same are by absolute sale, mortgage, statute merchant, statute staple, judgments, recognizances, or how otherwise, and the dates, tenor and short contents of such several incumbrances, and of the deeds, records, or other instruments or writings, treating of or relating to the same, and may set forth the respective considerations thereof, and when, where, and in whose presence, such considerations were respectively paid, and whether in specie, bills, or how otherwise, and whether the said incumbrances, or any, and which of them, are now unpaid and unsatisfied, and how much money is now due on the same respectively, and that the said J. W. may be decreed to pay and satisfy to your suppliant, the said several sums of and and all interest due, and to grow due thereon, after the respective rates aforesaid, by a short day to be appointed

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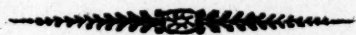
by this honorable court, together with your suppliant's costs, and in default thereof, that the said J. W. and all persons claiming under him, may be foreclosed of and from all equity of redemption or claim, in and to the said mortgaged premises, and every part thereof, and may deliver over to your suppliant all deeds, charters, evidences, writings, muniments, court rolls, rent rolls and minutes of courts whatsoever, relating to or concerning the said manor, messuages, farms, lands, tenements, hereditaments and premises; and that the said H. T. may set forth what right or title he hath or claimeth to have of the said premises, or any, and what part thereof, and whether he is not a trustee for your suppliant, and why he refuses to let your suppliant bring an ejectment in his name, in order to recover possession of the said premises, and that the said term of five hundred years may be declared to be in trust for your suppliant and his heirs, to attend the inheritance of the said premises, and that your orator may have such further and other relief in the premises, as to your lordship shall seem proper, and shall be agreeable to equity and good conscience. May it please your lordship, &c.

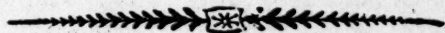


bargain and sell unto the said B. his executors, administrators and assigns, all that, &c. in which said indenture, there is a proviso contained to this or the like effect, that if the said C. his heirs, executors, administrators or assigns, should well and truly pay, or cause to be paid to the said B. his executors, administrators or assigns, the sum of five hundred pounds, with legal interest for the same, at or upon the day of which should be in the year of our Lord, that then and from thenceforth, the said indenture, and every clause and thing therein mentioned, should be utterly void; and the said C. did by the said indenture, covenant with the said B. his executors, administrators and assigns, to pay the said sum of five hundred pounds, with legal interest, on the said day of and at the place in the said indenture appointed for payment of the same, as in and by the said indenture, under the hand and seal of the said C. in your suppliant's custody, ready to be produced to this honorable court, may more fully and at large appear; and your suppliant further sheweth unto your lordship, that the said B. in his life-time, that is to say in or about the year, &c. made his last will and testament in writing, and thereof made the said A. your suppliant's said late husband deceased, executor, and soon after died, and that the said A. proved the said will in due form of law, and took upon him the burthen of the execution thereof, and thereby became entitled to the money due upon the said mortgage, or to the said mortgaged premises for nonpayment thereof, and that being so entitled, the said A. did in his life-time, that is to say, on or about the, &c. make his last will and testament in writing, and thereof made your suppliant sole executrix, and that your suppliant hath proved the said will, and taken upon her the burthen and execution thereof, and is thereby become entitled unto the money due upon the said mortgage, or to the said mortgaged premises for non-payment thereof, and hath often in a fair and friendly manner applied herself to him the said C. and requested him to pay the said principal sum of five hundred pounds, and the interest due for the same, to the intent that your suppliant might be enabled to perform the last will and testament of the said B. and the said C. did often promise your suppliant, that he would pay and satisfy the same, and your suppliant well hoped that according to his promise, he the said C. would have well and truly paid the said five hundred pounds, and what interest is due for the same, or else that your
suppliant

suppliant should have had and enjoyed the said mortgaged premises, free from all incumbrances, in satisfaction of the said five hundred pounds and interest; BUT NOW SO IT IS may it please your lordship, that the said C. combining and confederating with divers other persons, to your suppliant unknown, (whose names when discovered, your suppliant prays may be inserted in this her bill, with apt words to charge them) how to defeat and defraud your suppliant of the said money, due upon the said mortgage, or of the mortgaged premises, that so they may share and divide the same amongst themselves, on purpose to hinder your suppliant from performing the will of the said B. doth sometimes pretend and give out in speeches, that he had conveyed the said mortgaged premises to some other person or persons, for a valuable consideration, and thereby made an absolute sale of the same, before the same were mortgaged to the said B. and at other times he doth pretend and give out in speeches, that he had mortgaged the same before, and had only the equity of redemption in him at the time when he mortgaged the same to the said B. and that therefore, if your suppliant will have any benefit of the mortgaged premises so mortgaged to the said B. as aforesaid, your suppliant must pay off the prior mortgage; and at other times the said C. doth pretend and give out in speeches, that he hath confessed judgments, statutes and recognizances to divers persons, to which the said lands and premises are liable, and made other secret conveyances, and otherwise incumbered the premises, and yet conceals the names of the person or persons to whom he hath so sold or mortgaged the same, and to whom he hath confessed such judgments, statutes and recognizances, so that your suppliant knows not how to proceed at law, to recover the possession of the premises; ALL WHICH PRETENCES AND DOINGS of the said C. are contrary to equity and good conscience, and tend to the manifest wrong and injury of your suppliant; *in tender consideration whereof*, and forasmuch as your suppliant hath no way or means, whereby to discover what incumbrances there are upon the said mortgaged premises, and to which they are liable, nor to foreclose the equity of redemption against the said C. or his vendees or mortgagees in case any be, but in a court of equity before your lordship, where matters of discovery are properly to be had and made, and relief against secret and fraudulent conveyances is to be obtained, and the rather for that, your suppliant's witnesses are either dead, beyond the

the seas, or in places remote, and to your suppliant unknown. TO THE END THEREFORE, that the said C. may upon his corporal oath, to be by him taken on the holy Evangelists, true, full, distinct and perfect answer make to all and singular the premises hereby charged, and that as fully and particularly, as if the same were herein again repeated, and he interrogated thereto paragraph by paragraph, more especially that he may set forth and discover what incumbrances there are upon the premises, and when, and by whom, and the nature and kind of them, and who by name have pretended, or can pretend, or claim any title, right or interest in or to the said mortgaged premises, and for what considerations, whether by absolute sale, mortgage, judgment, statute or recognizance, or how otherwise, and the dates and contents of the same; and that the said C. may be compelled to pay your suppliant the said sum of five hundred pounds, and all interest due thereon, or else may be absolutely foreclosed of and from all and all manner of equity of redemption of the said mortgaged premises, and every part and parcel thereof, and that your suppliant may have such other and further relief in the premises, as is usual in cases of this nature. May it therefore please your lordship, &c.



A Bill to discover the Defendant's Title to a Lease.

To the Rt. Hon. John. Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, shew unto your lordship, your
suppliants and daily orator and oratrix, Humphry
Watson of Wicklow, in the county of Wicklow, and
Anne Turner of, &c. in the said county of Wicklow,
widow; that one Edward Turner, of the parish of St.
Andrew in Dublin, merchant taylor, being or pretending
himself to be lawfully possessed of, or entitled to a messuage
or tenement and garden, with the appurtenances, situate,
lying and being in in the county of by virtue
of a lease made by one Thomas Campbell to one Samuel
Evans, for the term of sixty years or thereabouts, whereof
above twenty years are yet to come and unexpired, at and
under the yearly rent of two pounds ten shillings; and of
an assignment thereof from the said S. E. he the said E. T.
for securing the repayment of the sum of one hundred
pounds which W. T. deceased, the brother of him the
said E. T. had before that time lent unto him, with interest
for the same, did by assignment under his hand and seal
duly executed, bearing date on or about the day of
 assign, transfer and set over unto him the said
W. T. his executors, administrators and assigns, the said
messuage or tenement and garden, with the appurtenances,
together with the said original lease; and all his the said
E. T.'s estate, right, title, term of years and interest in
and to the same premises; to hold unto the said W. T.
his executors, administrators and assigns, for and during
all the then rest, residue and remainder of the said term of
sixty years, in the said lease then to come and unexpired,
subject nevertheless to, and under a certain proviso or con-
dition for redemption, upon his the said E. T.'s payment
of the said sum of one hundred pounds, with lawful inter-
est for the same, upon or about the day of next
 ensuing

ensuing the date of the said assignment, as in and by the said lease and assignment, ready to be produced to this honorable court may appear; and your suppliants also further shew unto your lordship, that no part of the principal sum of one hundred pounds, nor any interest for the same, was paid according to the said condition for payment thereof, whereupon the assignment to the said W. T. became absolute, and all the estate and interest by and under the said original lease, became lawfully vested in the said W. T. and your suppliants further shew, that the said W. T. being so entitled to the said mortgaged premises, did afterwards, to wit, about the day of duly make, sign, seal and publish his last will and testament in writing, and therein and thereby (inter al') remit and forgive unto the said E. T. his brother, a bond, wherein the said E. T. stood bound unto the said W. T. in one hundred pounds, for the payment of fifty pounds and interest, and also gave unto the said E.'s two daughters, the sum of five pounds apiece, and unto himself and his wife, a guinea apiece, and the said testator having such assignment of the lease and premises before mentioned, from the said E. T. for securing the said sum of one hundred pounds, lent by him the testator unto the said E. T. with interest for the same, did by his said will, give and devise unto your suppliant H. W. the said lease and assignment, and all his estate and interest in the premises, but nevertheless did will and appoint, that in case the said E. T. should pay in the said principal sum of one hundred pounds within two years after his the said testator's decease, unto your suppliant H. W. without interest, then he the said E. T. should have again the said premises; and of his said will did constitute and appoint your suppliant A. T. his then wife, sole executrix, and afterwards, in or about the month of the said W. T. departed this life, without revoking or altering his said will; after whose death, your suppliant A. proved the said will in the prerogative court of and took upon her the execution thereof, as by the probate of the said will, under seal of the said court, may appear; and your suppliant A. T. did assent and agree to the said legacy given to your suppliant H. W. and did deliver the said lease and deeds of assignment to your suppliant H. W. accordingly; and your suppliant H. W. further sheweth, that the said E. T. and M. his former wife, being at the said testator's house some few days after his the said testator's decease, the said E. T. did

did desire to have the said testator's will read, which your suppliant H. W. thereupon read to him accordingly, and upon hearing the said devise to your suppliant H. W. read, the said E. T. did express and shew himself very much dissatisfied, and blamed his brother that he had given the said mortgaged premises from the said E. T. and turning to his said wife who then sat by, spake to her these words or to this effect, *Now Moll thou must work for thy living, for the house in* is given from thee, and did not alledge or pretend that any part of the said money was satisfied, but threatened to contest the validity of the said testator's will, and endeavour to procure the same to be set aside; and about three months after, he the said E. T. did send a letter unto your suppliant H. W. containing these words or to the effect following, viz.

" Cousin W. I understand by my tenant at that
 " you and my sister T. was with him, and told him I had
 " nothing to do with it, nor power to make a lease; I be-
 " lieve your legacy is not paid, for you cannot be a wit-
 " nesses to the will without quitting your legacy; I believe
 " I may put aside the will, and it will be better for my
 " sister Turner, for then she will come in for her thirds,
 " and so shall I, for your legacy takes you off for a witness;
 " you have been too forward, for the house and garden
 " cost me but ten pounds at farthest, and I have had six or
 " seven years, and a year and three quarters yet to come,
 " and there is a mortgage upon it already, so that when
 " my time is out, your garden and house will be but little
 " worth; I have agreed with my brother in his life-time,
 " to make the tenant a lease, and the tenant had a draught
 " of the lease, but now you have been with him, he will
 " neither repair nor fence, nor can I get my rent; I un-
 " derstand my sister Turner will hinder me of what money
 " my dear brother gave me, he sent me a letter to Mr.
 " Collier with his own hand and seal for the doing of it,
 " which thing is very unkind. I remain yours to serve
 " you, E. T. from, &c. February 7th, &c." And the
 supercription of the said letter is in these words, viz.
 for Mr. H. W.

as by the same letter
 which your suppliant H. W. hath left in the hands of Mr.
 E. B. his clerk in court, to the end the said E. T. may
 see and peruse the same, doth appear; and the said
 E. T. did afterwards, in or about the month of
 account and reckon with M. W. the then tenant of the
 said mortgaged premises, touching the rent due for the

faid premises, and having received the same, he the faid E. T. did then acquaint the faid M. W. that the faid W. T. had devised the faid mortgaged premises to your suppliant H. W. and that he the faid M. W. might and ought for the future to pay his rent for the faid premises to your suppliant H. W. whereupon the faid M. W. did attorn and become tenant to your suppliant H. W. and your suppliant H. W. well hoped he should quietly and peaceably have held and enjoyed the faid mortgaged premises, as in equity and conscience he ought to do, and have done. BUT NOW SO IT IS, may it please your lordship, that the faid E. T. combining and confederating with divers other persons to your suppliants unknown, with intent to defeat and defraud your suppliant H. W. of the benefit of the faid devise so to him made by the faid W. T. as aforesaid, doth now lately pretend and give out in speeches, that he the faid E. T. did in the life-time of the faid W. T. pay and satisfy unto the faid W. T. not only the money secured by the faid bond, which by the faid testator's faid will, is mentioned to be remitted to the faid E. T. and had the faid bond delivered up before the death of the faid W. T. but did also pay and satisfy all the money due upon the faid mortgage devised to your suppliant H. W. and that the faid W. T. did give and execute some general release unto him the faid E. T. though he the faid E. T. did never pretend any such thing, till since the time given him by the faid will for payment of the faid money was expired; and upon the pretences aforesaid, the faid E. T. hath commenced and prosecuted, and threatens to commence and prosecute divers actions against the faid M. W. your suppliant H. W.'s tenant, for the rent arrear, and what shall become due for the faid mortgaged premises, and hath exhibited his bill in this honorable court against your suppliants, to have the faid mortgaged deed and other writings concerning the faid mortgaged premises, to be delivered up to him; NEVERTHELESS he the faid E. T. doth refuse to discover when and where any part of the faid money pretended to be paid, was paid, or whether to the faid W. T. himself, or by his order, or to whom, or the date and contents of the faid pretended release, or when, where or in whose presence the same was executed, or who were witnesses thereunto; and in truth, the faid E. T. doth well know, no part of the money secured by the faid bond or mortgage, was ever paid or satisfied to the faid W. T. and if the faid
E. T.

E. T. did ever pay any money to the said W. T. the same was not upon account of the money due upon the said bond or mortgage, but was upon account of some other money lent or paid by the said W. T. to or for him the said E. T. besides the money secured by the said bond and mortgage; and the said E. T. hath at divers times, as well before as since the death of the said W. T. declared, he had not paid, nor ever intended to pay the money secured by the said mortgage, for that the said mortgaged premises were not worth near so much as the money he the said W. T. lent upon the said mortgage; and doth now deny that he caused the said letter to be writ, or sent the same to your suppliant H. W. and refuses to discover, whose hand writing the said was, although he well knows who wrote the same, and in truth the said pretended release was never executed by the said W. T. or was given upon some other account, or some other money that had been due to the said W. T. for the said E. T. and long before the time such pretended lease bears date, and the date thereof hath been altered since the same was executed; ALL WHICH DOINGS AND PRETENCES of the said E. T. are contrary to equity and good conscience; *in tender consideration whereof*, and forasmuch as all or most of the said confessions and declarations made by the said E. T. were made in private, when no person but your suppliant H. W. was present, or the witnesses who could prove the same, and the truth of the premises, are either dead or removed into parts beyond the seas, to your suppliant H. W. unknown, so that your suppliant H. W. cannot have the benefit of their testimony, nor can your suppliant H. W. make out the truth of the premises, otherwise than by the discovery and confession of the said E. T. who well knows all the matters aforesaid are true. TO THE END THEREFORE, that the said E. T. may set forth whether he paid any, and what part of money secured by the said mortgage, and if he did, when, where, and to whom, and in whose presence he paid the same, and by what sums or payments; and whether the said W. T. did not lend and pay divers, and what sums of money, to and for him the said E. T. and when, besides the money secured by the said mortgage and bond, and whether the money secured by the said bond was paid, and when, where, and to whom, and in whose presence, and when the said bond was delivered up to him; and in case he hath any such release from the said W. T. as is pretended, that he may set

set forth the same verbatim, and when, at whose house, and in what place the same was executed, and who wrote or filled up the said release, and who were present when the same was executed, and who were witnesses thereunto, and whether they are living or dead, where and with whom they then lived, and when and where such of them as are dead, died and were buried; and may likewise set forth whether he did not cause or procure the said letter to be writ and sent to your suppliant H. W. and who wrote the same, and whether he doth not know whose hand writing the letter is, and whose hand writing he doth suppose or believe the same to be, and whether such person be living or dead, and where and with whom he lived when he wrote the said letter, and where such person now lives or did live when he last saw or heard of him; and whether he the said E. T. did not usually employ some other person or persons to write letters for him, as in truth he did, and whom he did usually employ to write letters for him about the time the said letter bears date; and whether he the said E. T. did not about the time of the date of the said letter, desire or direct some person, and whom, to write to your suppliant H. W. touching the matter treated of in the said letter; and may likewise set forth, whether he did not upon the hearing of the said W. T.'s will read, use such expressions to his said late wife, as are before set forth, or some, and what expressions, to such or the like, and what effect, and whether he hath not a little before and since the said W. T.'s death, declared he had not paid, nor did intend to pay the money secured by the said mortgage, and when he first made mention to your suppliants that he had paid the said mortgage money, and had such release as he now pretends he hath, and why, and for what reason he did not sooner disclose or mention the same, and may answer all and singular the premises as fully as if the same were here again interrogated and particularly repeated, as well to his belief as knowledge, and may either pay your suppliant H. W. what shall appear to be justly due upon the said mortgage, or that your suppliant H. W. and his assigns, may hold and enjoy the said mortgaged premises, freed and discharged of and from all equity and power of redemption, and that your suppliants may be fully relieved in all and singular the premises, according to equity and good conscience. May it please your lordship, the premises considered, to grant unto your suppliants his Majesty's

Majesty's most gracious writ of subpcena, issuing out of this honorable court, directed to him the said E. T. thereby commanding him at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship, then and there to answer the charges aforesaid, and further to abide such order and decree as shall by your lordship be thought most agreeable with equity and good conscience. And your suppliants shall ever pray, &c.

Bill to redeem a Mortgage.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship, your suppliant John Armstrong, of, &c. that your suppliant having occasion to borrow the sum of one thousand pounds, did apply himself for that purpose to Thomas Wilson, of, &c. who agreed to lend to your suppliant the same, and your suppliant for securing the repayment thereof with interest, did agree to mortgage to the said T. W. the messuages, &c. and premises herein after mentioned, and accordingly your suppliant did execute to the said T. W. one indenture, bearing date on or about the day of and which was made between your suppliant of the one part, and the said T. W. of the other part, and by the said indenture, your suppliant in consideration of the sum of one thousand pounds to him in hand paid by the said T. W. did demise, &c. unto the said T. W. his executors, administrators and assigns, all that, &c. TO HOLD unto the said T. W. his executors, administrators and assigns, for the term of 99 years, subject to a proviso or condition of redemption, on payment of the said sum of one thousand pounds, with interest for the same, after the rate of four pounds ten shillings per cent. per ann. on the day of as in and by the said indenture of mortgage, in the custody of the said T. W. when produced, will more fully and at large appear; and your suppliant further sheweth unto your lordship, that your suppliant hath paid all interest for the said sum of one thousand pounds, till to the said T. W. but the said T. W. in order to distress your suppliant, hath caused declarations in ejectment to be delivered to the tenants in possession of the said premises, and doth threaten that he will get into possession thereof, and receive the rents and profits of the said premises, although your
suppliant

suppliant hath always been, and still is ready to pay to the said T. W. what is due to him for principal and interest on the said mortgage, and did actually on or about the day of tender and offer to the said T. W. the said sum of one thousand pounds, together with all interest due for the same, at the time the said tender was made, being the sum of pounds, being in full for all interest then due for the said sum of one thousand pounds, at four pounds ten shillings by the hundred, by the year; and also the sum of twenty five pounds, six shillings and two pence, for the costs of the said declarations, and your suppliant well hoped that the said T. W. would have received the said several sums of money so offered and tendered to be paid to him by your suppliant as aforesaid, and either have delivered up unto your suppliant the said mortgage deed to be cancelled, or have re-assigned the same to your suppliant, as in justice and equity he ought to have done; BUT NOW SO IT IS, may it please your lordship, that the said T. W. combining and confederating himself to and with divers other persons, at present unknown to your suppliant, whose names when discovered, your suppliant humbly prays may be inserted in this his bill of complaint, with apt and proper words to charge them; he the said T. W. (in order to deprive and defeat your suppliant of the benefit of redeeming the said mortgaged premises) does pretend and give out in speeches, that your suppliant did not borrow of the said T. W. the said sum of one thousand pounds, nor execute the said mortgage deed to the said T. W. for securing the repayment thereof with interest as aforesaid, but does pretend that the said sum of one thousand pounds was paid to your suppliant, in consideration of the absolute purchase of the said premises, for the said term of ninety nine years; and at other times he does admit that a deed of the same date as above mentioned, and made by the same parties, was executed by your suppliant, but that your suppliant did thereby absolutely dispose of the said term of ninety nine years, without such proviso of redemption as before set forth; whereas your suppliant chargeth, and so the said T. W. well knows, as the truth really is, that the said sum of one thousand pounds was borrowed upon the terms aforesaid. and upon no other consideration whatsoever, and that such deed, with such proviso as above mentioned, was executed by your suppliant as aforesaid, for the securing the repayment of the said sum of one thousand pounds, with

with interest as aforesaid, and that no other deed was executed by your suppliant relating to the said sum of one thousand pounds, or otherwise than what your suppliant has above set forth; and at other times the said T. W. does admit that such deed was executed as above mentioned, but does pretend that at the time of the tender above mentioned, great arrears of interest were due and owing from your suppliant to the said T. W. amounting to the sum of pounds and upwards, whereas your suppliant chargeth, and so the truth really is, that no more than the sum of was due and owing from your suppliant to the said T. W. for the interest of the said one thousand pounds at the time of the said tender; and upon the pretences aforesaid, the said T. W. refuses to come to any manner of account with your suppliant, or to reconvey the said premises to him, and is now proceeding at law, in order to get into possession of the said premises; **ALL WHICH ACTINGS, DOINGS AND PRETENCES** of the said T. W. and his confederates, are contrary to equity and good conscience, and tend to your suppliant's manifest wrong and injury; *in tender consideration whereof*, and forasmuch as your suppliant is altogether remediless in the premises, by the strict rules of the common law, and cannot have any discovery or relief touching the matters and things aforesaid, without the aid and assistance of this honorable court, where matters of account and redemption of estates are properly cognizable and relievable; **TO THE END THEREFORE**, that the said T. W. and his confederates (when discovered) may upon his and their corporal oaths, (to the best of his and their remembrance, knowledge and belief) true, perfect and direct answer make to all and singular the matters and things aforesaid, as fully as if the same were herein again repeated, and they thereunto particularly interrogated, and more especially, that the said T. W. may set forth whether your suppliant did not, and when, apply to him to borrow the said sum of one thousand pounds, or any other sum of money, and whether such deed was not executed by your suppliant, with such proviso for the repayment of the said sum of one thousand pounds, with interest at four pounds ten shillings per cent. per ann. how as above mentioned, or how otherwise, and whether your suppliant did not constantly, and to what time, pay the interest that became due for the said sum of one thousand pounds, to the said T. W. or some person or persons for his use, and
by

by his order or direction, and whether your suppliant did not make such tender of such several sums of money as above mentioned, to the said T. W. or how otherwise; and that the said T. W. may set forth what was due and owing to him on the said mortgage, for principal and interest, and his costs at law respectively, at the time of the said tender; and that he may set forth why, or for what reason, he refused to receive the said several sums of money so tendered as above mentioned; and that your suppliant may be at liberty to redeem the said mortgaged premises, and that the said T. W. upon your suppliant's paying to him what shall appear to be due to him for principal and interest on the said mortgage, together with his costs at law at the time the said several sums of money were so tendered to him by your suppliant as aforesaid, which your suppliant hereby offers to pay, and that thereupon, the said T. W. may reconvey and reassign to your suppliant the premises aforesaid, free and clear of all incumbrances, done by him, or by any person claiming by, from or under him, and that your suppliant may have such further and other relief in the said premises, as the nature of this your suppliant's case doth or may require, and as to your lordship shall seem meet. *May it therefore please your lordship* (the premises considered) to grant unto your suppliant, his Majesty's most gracious writ or writs of sub-pœna, to be directed to the said T. W. and his confederates when discovered, thereby commanding them, and every of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in this honorable court, then and there, upon their several and respective corporal oaths, true and perfect answer to make to all and singular the premises; and further to stand to and abide by such order and decree therein, as to your lordship shall seem meet, and your suppliant shall ever pray, &c.



The Mortgager having paid the Mortgagee in his Life-time, exhibits his Bill against the Mortgagee's Executrix and others, for discovery and re-delivery of his original Lease and Mortgage Assignment, and to have Possession of the Premises, and an Account of the Profits for the Payment of the Mortgage Money.



To the Rt, Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth, your suppliant and daily orator William Browne, of the city of Dublin, weaver; that your suppliant being possessed of, and legally entitled unto a certain messuage or tenement, and about three acres of ground with the appurtenances, situate, lying and being in the parish of St. Mary, Donnybrook, in the county of the said city, of the yearly value of twenty pounds or thereabouts, which your suppliant holds by lease made to him by sir A. K. knight, for a long term of years yet to come and unexpired, as by the said lease in the hands, power or possession of some or one of the confederates herein after named, had your suppliant the same to produce, might, reference being thereunto had, more fully and at large appear; your suppliant further sheweth, that having occasion for a sum of money, your suppliant did in or about the month of June, in the year of our Lord, one thousand seven hundred and seventy, borrow at interest, the sum of one hundred pounds sterling, of and from M. R. late of Meath-street in the county of Dublin, gent. deceased, and for securing the repayment thereof, with legal interest for the same, at the rate of six pounds by the year, on a certain day then to come and long since past, your suppliant did by indenture bearing date the day of June, in the said year one thousand seven hundred and seventy, assign, transfer and make over to the said M. R. the said messuage and premises, with the appurte-

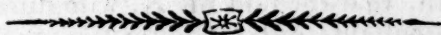
appurtenances thereunto belonging, for and during the rest and residue of the said term and number of years then to come and unexpired, of and in the said lease so made to him by the said sir A. K. knight, as aforesaid, under and subject to a certain proviso or condition therein mentioned, of and for the redemption of the messuage and premises, with the appurtenances, upon your suppliant's repayment of the said one hundred pounds and interest, at the rate aforesaid, at a certain day then to come and now long since past, as by the said deed of assignment in the hands, power or custody of some or one of the confederates herein after named, had your suppliant the same to produce, might, reference being thereunto had, more fully and at large appear, and your suppliant did at the same time deliver unto the said M. R. the original lease of the said messuage and premises, so made and granted to your suppliant by the said sir A. K. knight, as aforesaid, and all other writings relating to the said premises; your suppliant further sheweth, that he did not pay the said principal money at the time in the said assignment appointed for payment thereof, by reason whereof, the estate of the said M. R. became absolute in law, but your suppliant did from time to time pay, or cause to be paid to the said M. R. or his order, the interest money so due for the said one hundred pounds, so borrowed of the said M. R. as the same became due; your suppliant further sheweth, that about a year after such mortgage or assignment made by your suppliant unto the said M. R. of the said messuage and premises, the said M. R. having occasion for money, he applied to your suppliant, who thereupon did in or about the month of January, one thousand seven hundred and seventy one, pay the said M. R. a sum of twenty pounds, in part of the said sum of one hundred pounds so borrowed by your suppliant from the said M. R. as aforesaid, and your suppliant did in or about the month of November, in the said year one thousand seven hundred and seventy one, pay the said M. R. a further sum of fifteen pounds; and your suppliant further sheweth, that in or about the month of December, one thousand seven hundred and seventy one, the said M. R. having applied to your suppliant for money, alledging that he wanted the same for the purpose of buying some horses that were then shortly to be sold in his neighbourhood, your suppliant did then pay to the said M. R. a further sum of fifteen pounds, the remainder of the said sum of one hundred

hundred pounds so borrowed and taken up at interest by your suppliant of the said M. R. as also the sum of one pound ten shillings for interest, paid off and fully discharged the whole sum due by your suppliant to the said M. R. for principal and interest; and your suppliant further sheweth, that they then came to an account, not only as to the interest of the said one hundred pounds so borrowed and taken up by your suppliant, and which was so paid by your suppliant, but also as to all other matters in difference between your suppliant and the said M. R. at which time the said M. R. did seal and deliver to your suppliant, a general release in the presence of several credible witnesses, as by the same now remaining in your suppliant's custody, ready to be produced and proved as this honorable court shall direct, reference being thereunto had, may more fully and at large appear; your suppliant sheweth, that at the time the said M. R. so perfected said release to your suppliant, he alledged that he had not then about him, the said assignment or mortgage deed, but that the same was in the country, as also the said original lease, but promised that he would by a short day send them up to your suppliant, and your suppliant having a great reliance on the integrity of the said M. R. was fully satisfied with said promise, and never expected to have been troubled or questioned, or called to any account for the said sum of one hundred pounds, or any part thereof, your suppliant having paid the same to the said M. R. at the times and in the manner aforesaid; your suppliant further sheweth, that in some short time after the said M. R. had executed said general release to your suppliant, to wit, on or about the day of in the year of our Lord one thousand seven hundred and seventy two, the said M. R. died, without having ever handed over to your suppliant the said deed of assignment or mortgage, and the said original lease of the messuage or tenement herein before mentioned, yet your suppliant never expected that any person could claim or set up any demand against your suppliant, on account of the said securities; BUT NOW SO IT IS, may it please your lordship to be informed, S. R. the widow and executrix of the said M. R. combining and confederating herself together with one A. T. of the city of Dublin, haberdasher, and with divers other persons to your suppliant unknown, but whose names when discovered, your suppliant prays he may be at liberty to add and make parties to

to this his bill, with apt words to charge them, how to injure and oppress your suppliant in the premises, give out and pretend, that the said M. R. soon after your suppliant had borrowed the said sum of one hundred pounds as aforesaid, made his last will and testament in writing, unknown to your suppliant, and therein takes notice of the assignment or mortgage made by your suppliant to him the said M. R. and bequeathed the lease and assignment of the said premises to the said A. T. with condition, that, if your suppliant should pay the said sum of one hundred pounds with interest, after the decease of the said M. R. to the said A. T. then and in such case, the said A. T. was to reassign the premises to your suppliant; and the said M. R. happening to depart this life without making any other will, as is alledged by the said A. T. and the said S. R. the widow and relict of the said M. R. having proved the said will in due form of law, and having found your suppliant's said original lease and assignment of the premises amongst her late husband's papers, delivered the same up to the said A. T. who immediately thereupon, and without any due course of law, by some indirect means, got possession of the said messuage and premises, with the appurtenances, and entered into the receipt of the rents thereof, and detains the same from your suppliant, notwithstanding the said A. T. and the said S. R. well know that the said sum of one hundred pounds and all interest due thereon, was long since paid off by your suppliant to the said M. R. in his life-time, and not long before his death, and that the said M. R. had sealed and delivered a general release to your suppliant, and that said deed of assignment and original lease was left with said M. R. for the reasons herein before set forth, and for none other; and although the said S. R. as your suppliant expressly charges the truth to be had, actually seen your suppliant pay unto the said M. R. in his life-time, the whole of the said sum of one hundred pounds, principal money, or the greatest part thereof; and though the said A. T. and S. R. have often heard the said M. R. in his life-time, declare to several persons, that your suppliant had paid him the said sum of one hundred pounds and interest, and that he had settled and adjusted accounts with your suppliant, and had sealed and delivered to your suppliant, a general release, yet the said A. T. detains and keeps the possession of the said premises, and refuses to deliver to your suppliant, the original lease and assignment,

ment, although often times requested by your suppliant in a friendly manner so to do; **ALL WHICH ACTINGS AND DOINGS** of the said A. T. and S. R. are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your suppliant; *in tender consideration whereof*, and inasmuch as your suppliant is remediless in the premises, according to the strict rules of common law, and is relievable only in a court of equity, where matters of fraud and discovery are properly cognizable; **TO THE END THEREFORE**, that the said S. R. may on her corporal oath, to be by her taken on the holy Evangelists, set forth and discover, whether she did not find such original lease and assignment of the premises in question, amongst the writings of the said M. R. after his decease, and whether she did not deliver the same to the said A. T. in hopes of raising some benefit thereby; and whether she doth not well know and remember that your suppliant at the times herein before mentioned, paid the said M. R. the several sums set forth, or any, and which of them, and what part of the same did she see paid; and that the said A. T. may set forth how he came into possession of the premises in question, and what money he hath raised and received out of the rents, issues and profits of the premises, since his being in possession of the same, and that both the said confederates may set forth, discover and declare, whether they, or one or both of them, and which of them in particular, have heard the said M. R. in his life-time, and not long before his death, declare your suppliant had paid him the said sum of one hundred pounds principal money, and all interest due thereon, and that he had given your suppliant a general release; and that they may true and perfect answer make, to all and singular other the premises, as if particularly interrogated; and that the said A. T. may shew cause, if any he can, why he should not deliver to your suppliant the said original lease and assignment of the premises in question, and pay unto your suppliant all such sums of money as he hath received out of the premises, with your suppliant's costs and damages, and that he may be compelled so to do by the decree of this honorable court, and your suppliant relieved in all and singular the premises, according to equity and good conscience. May it therefore please your lordship, &c.

*A Bill brought by an Heir at Law against a Mortgagee,
to discover his Title.*



To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY, &c. sheweth, &c. your suppliant Henry Bateman, that William Bateman, deceased, your suppliant's late father, was in his life-time, lawfully seized and possessed in his demesne as of fee, of and in one messuage or tenement, with several acres of land, meadow and pasture thereunto belonging, of the value of thirty pounds per annum, or thereabouts, in Dungannon, in the county of Tyrone, which said tenements and premises did descend and come, as of right they ought, unto your said suppliant H. B. as son and heir of the said W. B. (your suppliant being then, and till now of late, an infant under the age of twenty one years) BUT NOW SO IT IS, may it please your lordship, that Martin Nugent, of, &c. doth claim and pretend to have some title, term, estate or interest in the said tenements and premises, or some part thereof, by or under some lease or grant made (as the said M. N. pretends) by the said W. B. your suppliant's father, in his life-time, unto him the said M. N. whereas if any such lease, grant or estate was made by your said suppliant's father, the same was but a mortgage for the security of some sum or sums of money; and all the money intended to be thereby secured, was long since paid and satisfied to the said M. N. by his perception of the profits of the premises, who actually entered upon the same, and got possession thereof during your suppliant's minority, and after his said father's decease, by pretence and colour of some conveyance or assignment of the said W. B. in his right, or in trust for him the said M. N. or else that the said term of the estate is now expired, or in case that the said term or estate be yet in being, and that any

any part of the money intended to be thereby secured, be yet remaining unsatisfied, your suppliant is willing to satisfy and pay the same; notwithstanding which, the said M. N. doth detain and keep the same from your suppliant, and refuseth to discover his pretended title and interest in the law, to the said tenement and premises, or by what means he became possessed thereof; and your suppliant further sheweth, that the said M. N. who during the minority of your suppliant, entered upon the premises and got possession thereof as aforesaid, hath made and raised great sums of money out of the rents, issues and profits of the premises, and refuseth to give any account to your suppliant for the same; and your suppliant having no counterpart of the said lease or grant made by your suppliant's said father to the said M. N. is ignorant of the contents thereof, and knows not what rent was thereupon reserved, nor hath any means to recover such rents, nor can tell when the said pretended estate was to begin or end, nor whether the same be expired or no, nor what money was thereby secured to be paid, nor to whom, or when, neither doth he know to whom the interest in law, in the said lease or estate since came; and the said M. N. pretends and gives out in speeches, that he will hold and keep the possession of the premises as a forfeited mortgage, and will take the full and strict advantage thereof in law; so that your suppliant is altogether remediless in the premises, save only by the aid of this honorable court, where matters of this nature are properly relievable and determinable; **TO THE END THEREFORE**, that the same M. N. may upon his corporal oath, set forth and discover what estate and title he hath and claims in and to the said tenement and premises, and when the same was made, and to whom, and for what term, and under what rent, and under what provisos, conditions and limitations, and what monies, if any, were intended to be thereby secured, and to whom, and when he entered upon the premises, and what he hath had, made and received by the rents, issues and profits thereof, or otherwise, towards satisfaction and payment of his debt secured by the premises, if any such debt or security was, and may account with your suppliant concerning the same; and that he may produce his original lease into this honorable court, and that your suppliant may have a true copy thereof, and that in case the same shall appear to be satisfied, (or otherwise if any money shall be due upon the same) that upon your suppliant's

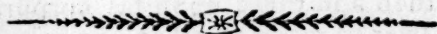
ant's payment of what shall appear to remain unsatisfied, he may surrender his said lease, mortgage or estate, or otherwise assign, reconvey and dispose thereof, as to your lordship shall seem meet and convenient; and that he may not be allowed to take any advantage of the forfeiture of the mortgage, (if any such there be) and that your suppliant may be relieved in all and singular the premises, according to equity and good conscience. May it please your lordship to grant unto your suppliant, his Majesty's most gracious writ of subpcena, issuing out of this honorable court, to be directed to the said M. N. thereby commanding him at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship, in his Majesty's high and honorable court of chancery, then and there upon his corporal oath, true and perfect answer to make to all and singular the premises, and further to stand to and abide such order, direction and decree in the premises, as to your lordship shall seem meet. And your suppliant, &c.



G

Plaintiff

Plaintiff being possessed of a Lease for 99 Years determinable for 3 Lives. Mortgages the same to J. G. who by the Plaintiff's Consent, mortgages to the Defendant by Indenture of Agreement, being to reconvey to the Plaintiff upon Payment of a sum of Money, the Defendant having entered and received Profits to satisfy the Same, with an Overplus; Plaintiff exhibits his Bill to compel him to reconvey and account.



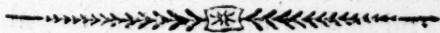
To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

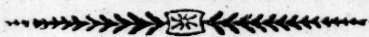
HUMBLY complaining, sheweth, &c. your suppliant John Simpson of Armagh, in the county of Armagh, gent. that your suppliant about the month of in the year of our Lord, being interested in and possessed of a toft, tenement and other hereditaments, in Armagh aforesaid, of the clear yearly value of ten pounds, for and during the natural lives of one William Jackson, Anne, his wife and Mary, their daughter, and the longest liver of them, and having occasion to borrow money, applied himself to one James Graham of the city of Dublin, merchant, who lent unto your suppliant, the sum of fifty pounds, for securing the payment whereof, your suppliant by indenture of mortgage, dated on or about the day of in the aforesaid year of our Lord, did demise, grant and to farm let unto the said J. G. the aforesaid toft, tenement and other hereditaments, and all his your suppliant's estate, term and interest therein, for and during the time or term of ninety years, if they the said W. J. A. his wife and M. their daughter, or any, or either of them should so long live, subject nevertheless to a proviso therein contained, that the same should be void upon his your suppliant's repayment of the said sum of fifty pounds with interest, at a certain day therein expressed,

pressed, as by the said recited indenture of mortgage, had your suppliant the same to produce, would more fully appear; and your suppliant further sheweth unto your lordship, that by indenture of assignment, dated on or about the day of the said J. G. for and in consideration of the sum of, &c. to him in hand paid by Thomas Needham of A. aforesaid, in the county of A. aforesaid, merchant, did by and with the consent of your suppliant, bargain, sell, assign and set over unto him the said T. N. the aforesaid toft, tenement and other hereditaments, together with the said recited indenture of mortgage, for and during all the residue of the aforesaid term of ninety nine years, if they the said W. J. A. his wife and M. their daughter, or any, or either of them should so long live, as by the said indenture of assignment, if your suppliant had the same to produce, would likewise more fully appear; and your suppliant further sheweth unto your lordship, that an indenture of agreement, dated on or about the day of in the aforesaid year of our Lord, and made between the said T. N. of the one part, and your suppliant of the other part, the said T. N. for himself, his executors, &c. thereby covenanted, upon his your suppliant's paying unto him the sum of pounds, upon the day of then next after the date of the said indenture of agreement, that then he the said T. N. would reconvey the aforesaid toft, tenement and other hereditaments unto your suppliant, or such other person as your suppliant should direct and appoint, as by the said indenture of agreement, if your suppliant had the same to produce, would likewise more fully appear; but it seems, your suppliant happening to make default of payment of the said pounds, pursuant to the covenant in the said recited indenture of agreement mentioned, the said T. N. entered into the possession thereof, and hath for these years and upwards, received the rents, issues and profits, which were yearly worth pounds, during which time, by such perception of profits, the said pounds, with all interest due for the same, is paid, with a great deal of overplus; and in all equity and good conscience, the said T. N. ought to deliver up the possession of all the premises to your suppliant, and ought to make an account to your suppliant for what he hath received above the said pounds, and interest, and ought also to deliver up all the deeds,

deeds, writings and evidences which relate thereunto; BUT NOW SO IT IS, may it please your lordship, that the said T. N. combining and confederating with divers other persons unknown to your suppliant, whose names when discovered, your suppliant prays may be inserted in this his bill, with apt words to charge them. To the end the said T. N. may keep your suppliant out of the possession, and still receive the rents and profits to himself, the said T. N. doth not only refuse to deliver the possession of the said toft, tenement and other hereditaments to your suppliant, but also doth deny to give your suppliant any account of what he hath received out of the premises, though your suppliant hath several times civilly intreated him to do the same. ALL WHICH DOINGS of the said T. N. are contrary to equity and good conscience, and tend very much to the loss and prejudice of your suppliant; *in tender consideration whereof*, and forasmuch as your suppliant cannot by the common laws of this realm, bring the said T. N. to any account, nor obtain any relief thereupon, unless by the aid and assistance of this honorable court, and the rather by reason your suppliant's witnesses that can make out the truth of the premises, are either dead, &c. so that the truth of the premises cannot be known but by the oath of the said T. N. TO THE END THEREFORE, that the said T. N. and the rest of the confederates when discovered, may upon their several oaths, true and full answer make to all and singular the premises; and particularly that the said T. N. may set forth what title he claims to the said toft, tenement and other hereditaments, and what deeds, writings and evidences he hath in his custody, or in the custody of any other, or what other person with his privity, that relate thereunto; and whether there was really and *bona fide* due to him any more than pounds, and that upon payment thereof, pursuant to the indenture of agreement, he was not to reconvey the same to your suppliant, and may set forth the true yearly value of the said toft, tenement and other hereditaments, and how much hath been received out of the rents, issues and profits of the same, either by him or any other person for his use; and may also set forth how long he hath had the possession, or received the profits thereof, and may full and perfect answer make to all and singular other the matters and things in this bill contained, and all the circumstances thereof, as
fully

fully and particularly in every respect, as if the same were all repeated, and particularly interrogated; and further, that the said T. N. may by the decree of this honorable court, not only be compelled to reconvey the said tenement, toft and other the hereditaments to your suppliant, but also to come to a full and just account with your suppliant, and render unto him what shall appear to be due; and that your suppliant may be relieved in the premises according to equity and good conscience. May it please your lordship to grant, &c.



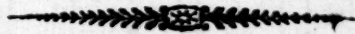
An Answer to a Bill of Foreclosure.

The Answer of A. B. Defendant, to the Bill of Complaint of C. B. Complainant.

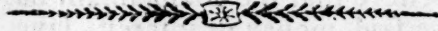
THIS defendant saving and reserving, &c. answereth and saith, that she doth admit that the indentures in the said complainant's said bill of complaint, alledged to bear date the twenty fifth day of March, one thousand seven hundred and thirty five, and the seventh day of August, were duly executed by the said parties thereto, or of some of them, for such intent and purposes as in the said bill is set forth, according to the best of this defendant's knowledge, remembrance and belief, but to which for more certainty therein, and as to the covenants thereof, she, this defendant craves leave to refer, when the same shall be produced unto this honorable court; and this defendant doth admit, that she this defendant having occasion for a sum of money, did apply to the complainant, and desired him to assist her therewith, and that the complainant did agree to supply this defendant with seventy five pounds, and that it should continue for four years without being called in, but the complainant did insist that this defendant should allow him out of the said sum, seventy five pounds for insuring this defendant's life; and the further sum of thirteen pounds, for interest of the said seventy five pounds, for the first four years, and that the same should be deducted out of the said seventy five pounds, and that he would pay to this defendant the remaining forty five pounds, provided this defendant would permit him to deduct thereout, the said insurance and the said thirteen pounds interest, and this defendant being in great necessity for money, did submit thereto, and thereon this defendant doth believe, that such indenture of the seventh of August, as in the said complainant's said bill was set forth as duly executed by this defendant, and the receipt given for seventy five

five pounds; but this defendant does insist, no more was paid to this defendant than forty five pounds, and that this defendant has frequently offered by herself or agents, to pay him that sum with lawful interest and costs of suit, but he refused to accept the same; and this defendant does not know or believe that the complainant has ever received any part of the said money or interest, save as aforesaid, but this defendant humbly hopes that the said complainant shall not be aided or assisted by any decree of this honorable court, in order to the foreclosing the possession of the said demised premises, or any part thereof, she, this defendant now being ready and willing to account with the complainant for the sum by him really advanced, together with reasonable interest for the same, from the time of the said complainant's advancing the same to this defendant; and this defendant humbly hopes, that on paying and discharging the said principal sum of forty five pounds, and interest for the same, the said complainant shall be obliged to deliver up or assign over, the said indenture of the seventh of August, mentioned in the said bill, and all other deeds and writings in his custody or power, to or for the use of this defendant, freed and discharged of and from all incumbrances done by him or any other person or persons, claiming by, from or under him; and this defendant doth deny, &c.

J. M,



Answer

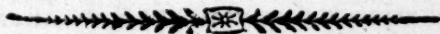
Answer to a Bill for discovering a Mortgage.

The Answer of R. S. one of the Defendants, to the
Bill of Complaint of A. T. Complainant.

THIS defendant saying, &c. saith, that he hath heard and believes it to be true, that T. W. late of deceased, in the complainant's said bill of complaint named, might be indebted to the said complainant, but the particular sums or persons he this defendant, and this defendant further saith, that he hath heard and believes it to be true, that the said T. W. was at the time of his death, seized of the manor of C. and other the premises in the complainant's said bill mentioned, to him and his heirs, and that they were of the yearly value of two hundred pounds and upwards, and that the said T. W. did make such will, as in the said complainant's bill is set forth; and this defendant further saith, that some time before the death of the said T. W. this defendant recovered judgment against the said T. W. for the several sums of one hundred and fifty pounds, forty pounds and one hundred and ten pounds, making together three hundred pounds; and the said T. W. for the further securing the repayment of the three hundred pounds to this defendant, did by indenture, bearing date the twenty ninth day of August, in the year of our Lord, one thousand seven hundred and thirty eight, in consideration thereof, and of the sum of five shillings to him in hand paid by this defendant, assign unto this defendant, [*here set forth the deed of assignment*] to hold to this defendant, his executors, administrators and assigns, for the term of one thousand years, at a pepper corn rent, subject to redemption on payment of three hundred pounds and interest, in manner therein mentioned, as in and by the said indenture, in the custody of this defendant, when produced to this honorable court, will appear; and this defendant further saith, that the said several securities were

were given for money really and bona fide due and owing to this defendant from the said T. W. at the several days and times that the said several securities were given and entered into, and the whole sum of three hundred pounds and interest was due and unpaid at his death; and this defendant further saith, that he is ready and willing, on being paid what is due for principal and interest, and having his full costs paid to assign his said mortgage and judgments, as this honorable court shall direct; and this defendant doth deny all and all manner of unlawful combination and confederacy wherewith he is charged, in and by the said complainant's said bill of complaint, without that, &c.

T. S.



H

Of

Readings and Observations on Mortgages.

Of the Nature and different Kinds of Mortgages, and herein of the Power of Equity in Supplying Defects in Favour of the Mortgagee, and in making that a Mortgage which otherwise would be an absolute Conveyance.

1st.

A mortgage is the same thing as the hypotheca of the civilians, and may be defined a pledging of lands or other immoveable thing, for money lent in such manner, that the profit or usufructus of the thing pledged, remains with the debtor till such time as default is made in payment of the money at the time appointed.

2d.

There were no mortgages of lands whilst the ancient feudal tenures continued, because the feud was filled with a tenant from the lord's original bounty; but when a liberty of alienation was given, two manner of ways of mortgaging were made use of, which Littleton distinguishes between, and calls by the names of *Vadium vivum* and *Vadium mortuum*. *Co. Lit.* 205.

3d.

The *Vadium vivum* is where a man borrows 100*l.* of another, and makes an estate of lands to him, till he hath received the said sum of the issues and profits of the lands, and it is called *Vadium vivum*, because neither the money nor the land dieth, for the lands are constantly paying off the money, and they are not left as a dead pledge in case the money be not paid; and this seems to have been the most ancient way of pledging. *Lit. Sect.* 205.

4th.

4th.

The *Vadium mortuum* is so called, because it is doubtful whether the feoffor will pay the money at the day limited or not, and if he do not pay, the land which is but in pledge, upon condition for the payment of the money, is taken from him for ever, and so dead to him, and if he do not pay it, then the pledge is dead to the tenant of the land; the ancient way of making those mortgages, was by a charter of feoffment, on condition, that if the feoffor or his heirs, paid the sum to the feoffee or his heirs, he should re-enter and re-possess, and sometimes the condition was contained in the charter of feoffment, and sometimes it was defeasanced by another charter made at the same time. *Litt.* 332, *Maddox* 318.

5th.

These sort of conveyances were subject to these inconveniences, that if the money were not paid at the day, the estate became absolute, and was subject to the dower of the wife of the feoffee, and all other his real charges and incumbrances, though he were afterwards permitted to perform the condition. *Co. Lit.* 221, *Cro. Car.* 190.

6th.

*But the courts of equity have set this matter right, and have maintained the right of redemption, not only against tenant in dower, and the persons that come under the feoffee, but even against tenant by the courtesy, and the lord by escheat, that are in the *post*, because the payment of the money, doth, in consideration of equity, put the feoffer in *statu quo*, since the lands were originally only a pledge for the money lent. *Hard.* 465, 469.

7th.

If tenant in tail demises lands for 99 years by way of mortgage, under a condition of redemption, and on his marriage, suffers a recovery, and in consideration of the portion, settles a jointure, and then borrows more money of the mortgagee, and appoints the term as a security, the recovery inures to make good the term, and if the mortgagee

**Vid.* 2 *Bac. Abr.* 128.

52 *Of the Nature and different Kinds of Mortgages.*

mortgagee had no notice of the jointure, he shall be allowed the second money lent as well as the first. 1 *Chan. Ca.* 116, 120.

8th.

If a copyholder in fee, surrenders to the use of the mortgagee in fee, and the copyholder becomes a bankrupt before presentment, and there is no presentment; yet, per Cowper, lord chancellor, though the surrender was void in law for want of a presentment, and that might be the laches of the mortgagee in not procuring it, yet the surrender was a lien, and that bound the land in equity, and the assignee under the commission of bankruptcy ought not to be in a better case than the bankrupt, who was plainly bound in equity by this defective conveyance. *Mich.* 8, *Ann Taylor and Wheeler*, 2 *Salk.* 449.

9th.

The plaintiff lent a sum of money on the mortgage of some houses, and had a bond for payment of the money, as usual in such cases, afterwards he lent a farther sum of 2000*l.* on the equity of redemption, and had a bond for that likewise, afterwards the mortgagor becomes a bankrupt, and by some accident, the value of the houses sunk so much, that they were not sufficient to raise the mortgage money first lent; and on a bill brought to have them sold, and that as to so much as they fell short to answer the first mortgage money, the mortgagee might come in upon his bond as a creditor, it was so decreed, and as to the 2000*l.* lent upon the equity, which was worth nothing, it must stand singly upon the bond. *Pasch.* 1695, *Wiseman and Carbonell*.

10th.

A. lends money to B. to carry on certain buildings, and takes a mortgage from him to secure 16000*l.* with interest, and by another deed, executed at the same time, takes a covenant from B. that he should convey to him, if he thought fit, ground rents to the value of 16000*l.* at the rate of 20 years purchase, and on a bill brought to redeem, the master of the rolls decreed a redemption, on payment of principal, interest and costs, without regard to that agreement, but set aside the same as unconscionable, for a man shall not have interest for his money, and a collateral advantage

advantage besides for the loan of it, or clog the redemption with any bye agreement. *Mich.* 1705, *Jennings and Ward*, 2 *Vern.* 520.

11th.

If the condition of a mortgage is, that the mortgagor should redeem during his life, or that the mortgagor and the heirs of his body should redeem, yet equity will admit the general heir of such mortgagor to a redemption, because this can be no purchase, since there is a clause of redemption, and when the land was originally only a pledge for money, if the principal and interest be offered, the land is free, and it would be very hard that it should be in the power of the scrivener or griping usurer, by such impertinent restrictions, to elude the justice of the court. 1 *Vern.* 33, 190, *S. C.* 2 *Chan. Ca.* 147, *S. C.*

12th.

But if a man borrows money of his brother, and agrees to make him a mortgage, and that if he has no issue male, his brother should have the land, such an agreement made out by proof, may well be decreed in equity. 1 *Vern.* 193, per *North*, lord keeper.

13th.

A. in consideration of 1000*l.* made an absolute conveyance to B. of the reversion of certain lands after two lives, which at that time were worth little more, and by another deed of the same date, the lands are made redeemable any time during the life of the grantor only, on payment of the 1000*l.* and interest, A. died, not having paid the money, and it was held by my lord Nottingham, that his heir might redeem, notwithstanding this restrictive clause, and that it was a rule, *once a mortgage and always a mortgage*, and that B. might have compelled A. to redeem in his life-time, or have foreclosed him; but on a rehearing, lord keeper North reversed the decree on the circumstances of this case, for it appeared by proof, that A. had a kindness for B. and that he had married his kinswoman, which made it in the nature of a marriage settlement, he likewise held, that B. could not have compelled A. to redeem during his life, which made it more strong. 33 *Car.* 2, *Newcom and Bonham*, 1 *Vern.* 7, 214 *S. C.* 232 *S. C.* 2 *Vent.* 364 *S. C.* where it is said, that lord North's decree was affirmed in the house of lords. *Vide* 1 *Vern.* 268.

14th.

14th.

If A. mortgages land to B. worth 15*l.* per ann. for securing 200*l.* and at the same time, B. enters into a bond, conditioned, that if the 200*l.* and interest is not paid within a year, then he to pay to A. his executors or administrators, the further sum of 78*l.* in full for the purchase of the premises, &c. and A. dies within the year, and the money is paid the next day after the mortgage is forfeited to his administrator, yet A.'s heir may redeem, paying the 200*l.* and likewise the 78*l.* that was paid the administrator. *Mich.* 1687, *Willet and Wumel*, 1 *Vern.* 488, decreed.

15th.

So where A. for 550*l.* made an absolute assignment of a church lease for three lives to B. and B. by writing, under his hand, agreed, that if A. paid 600*l.* at the end of the year, B. would reconvey; B. died, leaving C. his son and heir, two of the lives died, and the lease was twice renewed by C. and his father, and tho' it was near 20 years since the conveyance was made, yet the master of the rolls decreed a redemption, on payment of the 550*l.* and the two fines, &c. *Mich.* 1688, *Manlove and Ball*, 2 *Vern.* 84, *Vide* 1 *Vern.* 183, 394, where a mortgagee was allowed to redeem before the time agreed on.



Of the Equity of Redemption, at what Time.

1st.

AT a rehearing before my lord keeper, assisted with justice Vaughan and Turner, concerning the redemption of a mortgage which had been made above 40 years, my lord keeper declared, that he would not relieve mortgages after 20 years, for that the statutes of limitations did adjudge it reasonable to limit the time of one's entry to that number of years, unless there are such particular circumstances as may vary the ordinary case, as infants, femmes covert, &c. who are provided for by the very statute, though these matters in equity are to be governed by the course of the court, and that it is the best to square the rules of equity as near the rules of reason and law as may be. *Ewre and White, 2 Vent. 340.*

2d.

A bill was exhibited to redeem a mortgage, to which the defendant demurred, because by the plaintiff's own shewing, it appeared the mortgage was 60 years old, but upon argument, the demurrer was over ruled, because it was charged in the bill that the mortgagor agreed the mortgagee should enter and hold 'till he was satisfied, which is in the nature of a Welch mortgage, and in such case the length of time is no objection. *Mich. 1686, Orde and Heming, 1 Vern. 418.*

3d.

So where a bill was exhibited to redeem a mortgage made in 1642, though the mortgagee entered in 1650, and there were three descents on the defendant's part and four on the part of the plaintiff, yet the length of time being answered for the greatest part by infancy or coverture, and forasmuch as in 1686 a bill was brought by the mortgagee

gagee to foreclose, and an account then made up by the mortgagee, the court decreed a redemption, and an account from the foot of the account in 1686. *Trin. 1700. Procter and Cowper, 2 Vern. 377.*

4th.

But where a mortgage was made to A. in the year 1639, to indemnify him against debts for which he was engaged for the mortgagor, and in the year 1649, he entered into the mortgaged premises and had possession, and afterwards conveyed away several parts of the mortgaged premises to several persons, and several sales and marriage settlements had been made of them. In the year 1663, a bill was brought to redeem, but all the assignees were not parties, and a decree to an account, and a report made, and exceptions taken to that report, and so it rested about 18 years, and then another bill was brought, and another decree to redeem, but no prosecution upon it from the year 1676 'till 1697, and then the plaintiff having purchased the equity of redemption of those lands (*inter alia*) from the heirs of the mortgagor, brought his bill to redeem; the objections against it were the length of time, the many derivative titles that had been made, and when no suit was depending, and the difficulty of taking the account; to which it was answered, that there had been fresh pursuits, and that the difficulty of the account had been occasioned by the mortgagees themselves, and that there were infants in the case; my lord keeper held there ought to be no redemption, and that length of time excuses the mortgagee for taking the estate for his own, and using it accordingly, and none that have come in under him have done amiss, and though there were infants in the case, yet the time having begun upon the ancestor, it shall run even upon infants, as it is at law in the case of a fine, and there is one great objection to a redemption in this case, that it does not appear that the plaintiff paid any thing for this equity of redemption, only had it thrown into his bargain. *Hill. 1700, St. John and Turner, 2 Vern. 418, S. C.*

5th.

The plaintiff's grandfather in the year 1686, had made a mortgage of the estate in question, which proved to be about 9 $\frac{1}{2}$. or 10 $\frac{1}{2}$. per ann. for securing 100 $\frac{1}{2}$. in the year 1696,

1696 this mortgage was assigned over to the defendant, who by agreement was then let into possession, and had continued so ever since, and was now about 90 years of age, the mortgagor died several years since, leaving the plaintiff's father, his eldest son and heir, of full age, who likewise died in the year 1714, leaving the plaintiff, his eldest son and heir, then about 12 years of age, who brought this bill for an account, and to be let into a redemption of the estate in question, but which the defendant had been in possession of 33 years, and so was greatly overpaid his principal and interest, but my lord chancellor dismissed his bill, and ordered it to be entered down as one of the reasons for dismissing the bill, that the plaintiff had no remedy by ejectment at law to recover the possession, being barred by the statute of limitations, and he thought that a reasonable guide for this court to follow as to the redemption in equity, and though the plaintiff was an infant at his father's death, yet the computation of time began long before, when there was no infancy in the case, and therefore will run on against infants after, *Mich. 1729, Knowles and Spence.*



Of the Persons to Redeem.

1st.

A person who comes in by a voluntary conveyance may redeem a mortgage, 1 *Vern.* 193; admitted he who comes to redeem a mortgage must shew a title, 1 *Vern.* 182.

2d.

If a man enters into a bond, in which he binds himself and his heirs, and dies, leaving a real estate to descend to his heir subject to a mortgage for years, and the heir sells the equity of redemption, the obligee cannot redeem the mortgage without first having a judgment at law against the heir, *Pasch.* 1702, *Bateman and Bateman.*

3d.

The mortgagee in fee after forfeiture was attainted, and the king seized, and whether the mortgagor should redeem, *dubatur*, *Hard.* 465.

4th.

A. mortgaged his lands, upon condition that if he or his heirs repaid 100*l.* at such a day, he should re-enter before the day he dies, leaving issue a daughter, his wife *ensient* with a son, the daughter pays the money at the day, and then the son is born; the daughter shall keep the lands, and the son shall not recover against her, for the daughter is in nature of a purchaser, where she hath regained the land by her own vigilance, which otherwise had lapsed at law to the mortgagee. *Cro. Car.* 87. 1 *Co.* 99.

5th.

If a man devises lands which are in mortgage to A. for life, remainder to B. in fee, A. shall contribute one third towards the discharge of the mortgage. 1 *Chan. Ca.* 271, *Vide* 2, *Vern.* 117 and title, *Contribution and Average*, letter (B)

6th.

6th.

If a jointress who is to hold the land free from incumbrances, pays off a precedent mortgage, her executors shall hold over till they are satisfied, because such tenant for life ought to be reimbursed the money she paid to set her estate free, and in the condition she ought to have been. 1 Chan. Ca. 271, 2 Chan. Ca. 100, 1 Chan. Rep. 19.

7th.

But if a jointress after marriage join with her husband in a fine and mortgage the land, and the husband dies, there her land is charged, and she shall pay her part towards the disburthening the land, and her executors shall not hold the lands till satisfied thereof, because she herself concurred in the laying on the charge, and therefore must join in the disburthening of it, according to the value of her interest. 1 Chan. Ca. 271, 2 Chan. Ca. 99, 100. 1 Chan. Rep. 19.

8th,

If a man marries a jointress of houses which are burnt down, and the husband and wife borrow 1500*l.* to build on the ground, and levy a fine *sur concessit*, for 99 years, if the wife lived so long, and a deed is made between the conuzee and the husband, wherein the husband covenants to repay the mortgage money with interest, and the equity of redemption is limited to the husband and his heirs, and the husband expends 3000*l.* or 4000*l.* in building upon this ground, and dies, the wife shall redeem, and not the heir of the husband, Decreed by Nottingham, lord chancellor, and affirmed on a rehearing, by North, lord keeper. *Brend and Brend*, 1 Vern. 213. For the wife was no party of the deed of re-demise, by which the redemption was limited to the husband, and the wife being a jointress, and having granted a term for years only out of her estate for life, there rests a reversion in her which naturally attracts the redemption.

9th.

A. on his marriage agreed to leave his wife 1000*l.* if she survived him, the drawing of the agreement was left to the parson of the parish, who made a bond from A. to his intended wife in 2000*l.* conditioned to leave her 1000*l.* if she

she survived him; the marriage was had and A. died, leaving a freehold and a copyhold estate in mortgage, and which were mortgaged together, and it was held that the wife should redeem, as well the freehold as copyhold, and hold over till she was satisfied. *Hil. 1704, Aston and Pierce, 2 Vern. 480.*

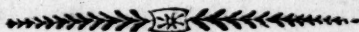
10th.

A. joins with B. her husband, in making a mortgage for years of her inheritance, for 4500*l.* to supply the husband's occasions, to pay for the place of captain of the band of pensioners, and subject to the mortgage; the estate was settled on A. for life, remainder to her son in tail; B. in the mortgage deed covenants to pay the money, and the proviso was, that on payment of the mortgage money the term was to cease; the mortgage was several times assigned, and particularly in 1683, and the wife joined in it, and there the proviso was, that on payment of the money by them or either of them, the mortgage term was to be assigned as they or either of them should direct or appoint. A few days after the mortgage was made, B. by letter thanked his wife for having sealed it, and added, that the profits of the office should be religiously applied to pay off the incumbrances, but afterwards when money came in, tho' he paid off the mortgage, yet he took an assignment thereof in trust for himself, and by will devised his personal estate, and the benefit of this mortgage to his second wife; and on a bill by the son of the first wife, to have this mortgage assigned him, it was declared by my lord keeper, that he could not decree for him but upon the usual terms of redemption, on payment of principal, interest and costs, discounting profits; but upon an appeal to the lords, the son obtained a decree to have the mortgage assigned to him. *Pasch. 1702, the earl and countess of Huntington, 2 Vern. 437.*

11th.

So where A. and his wife mortgaged the wife's estate, and A. covenanted to pay the money, but the equity of redemption was reserved to them and their heirs; the husband dying, it was decreed, that the mortgage should be discharged out of the husband's estate. *Hill. 107, Pocock and Lee, 2 Vern. 604.*

Of Foreclosure, and here of opening the Foreclosure, Parties foreclosed, and tender and refusal of the Mortgage Money.



1st.

A mortgagee obtained a decree against a mortgagor, and all the creditors whose debts affected the estate, that they should redeem or be foreclosed; one of the creditors pays the money by the consent of the rest, and has the mortgage assigned to him, and agrees with them, that if they would pay his money at a further day, they should redeem him, otherwise that he should have the lands absolutely; and it was held, on a bill brought by the other creditors, that they should redeem tho' the creditor who paid the money had been in possession 20 years, and had made great improvements, they allowing only necessary repairs and lasting improvements. *Hil. 1682, Eaton and Greaves, 1 Vern. 138.*

2d:

There being a first and second mortgage made of the same estate, the first mortgagee brought a bill against the second to compel him to redeem or to be foreclosed, and foreclosed him accordingly, it so happened that the first mortgagee by his will devised the premises to the mortgagor, and thereupon the second mortgagee brought a new bill to set aside the first mortgage, and to be let into a satisfaction of his money, the defendant pleaded the former suit and decree of foreclosure, but the plea was over-ruled. *Trin. 1691, Cook and Sadler, 2 Vern. 235.*

3d.

If a mortgagee has a decree of foreclosure, tho' that decree be signed and inrolled, yet if he after brings an action of debt on the bond given at the same time for payment of the money, and performance of the covenants in the mortgage deed, such action opens again the foreclosure and lets in the equity of redemption of the mortgagor. *Trin. 1729, Daffwood and Blythway at the rolls.*

4th.

4th.

A man takes a mortgage, and afterwards makes a marriage settlement of the equity of redemption, wherein he limits it on the wife, and then on the issue of his body, with remainder in tail to his brother, the mortgagee exhibits his bill against the mortgagor to have his money, or that he may stand foreclosed, without making the brother a party, and has a decree accordingly; and afterwards the mortgagor dies without issue, and the lands remain to the brother by the marriage settlement, who prefers his bill to redeem, and it was dismissed, for having made those parties to the bill of foreclosure who were parties to the mortgage, he did as much as was necessary, for perhaps it was impossible for him to know all the parties against whom to seek a foreclosure, and this would keep him an eternal bailiff to the mortgagor; besides, to open an account after length of time, against a person who by law was obliged to keep no account, in favour of a mere volunteer, is unreasonable. 1 *Chan. Ca.* 217, 220.

5th.

Tenant for life the reversion in fee, he in reversion mortgages his estate in fee, and the mortgagee deviseth it, the devisee may bring his bill against the mortgagor, and need not make the heir of the devisor a party, because he hath no interest in the lands at all, it being all devised away from him, and he need only foreclose the mortgagor. 2 *Chan. Ca.* 32.

6th.

If a man mortgages lands and then confesses several judgments, and some of the persons that have judgments give the mortgagee notice, and after he obtains against the mortgagor a decree to foreclose, such persons that gave notice of their interest shall notwithstanding, redeem, because they are creditors for a valuable consideration, and the mortgagee had notice of them, so that he might have made them parties to his bill; but the persons that gave no previous notice of their judgment, are totally barred of all redemption by the former decree. 1 *Chan. Rep.* 170, 171.

7th.

But when a bill was exhibited by a second mortgagee to redeem, and the first mortgagee pleaded his mortgage, and a decree to foreclose the mortgagor without notice of the second mortgage, yet the plea was over-ruled. *Mich. 1707, Godfrey and Chadwell, 2 Vern. 601.*

8th.

If the mortgagor tenders the money and the mortgagee refuses, he loses the interest from the time of the tender, because it is but a pledge for the money; and if the money be tendered, he ought not to keep the pledge, and no man ought to pay for the forbearance when he hath the money ready. *Chan. Ca. 29, 2 Chan. Ca. 206, S. P.*

9th.

The plaintiff had made a mortgage in fee of his estate, which by several mesne assignments was come to sir William Dodwell, and there being likewise two several terms for years standing out, they were assigned to trustees, in trust for sir William Dodwell, to protect the inheritance, and subject to the same equity of redemption; the plaintiff and sir William Dodwell settled an account of what was due, and there appeared to be due thereon 4400*l.* principal money, the interest was then paid off, and at the same time sir William Dodwell gave a note, whereby he promised, that on payment of the sum of 4479*l.* or thereabouts, on the 23d. of October then next being, the interest computed to that time, he would reconvey the inheritance to the plaintiff and his heirs, and would procure his trustees to assign the two terms for years as the plaintiff should direct; in August following sir William Dodwell died, and the defendants were his executors, and he likewise left the defendant Mary, his only child and heir at law, an infant of about 8 years of age; the plaintiff provided the money, and on the 23d. of October, tendered a bank bill of 4500*l.* to one of the executors, (there being four in all) for him to take thereout what was then due for principal and interest, but the executors having none of them proved the will, he refused to accept of the tender, upon which the plaintiff asked him if he objected to the legality of the tender, being in a bank bill

bill and not in money, and that if he did, he would presently turn it into money, to which the other answered, he had no objection to the tender, but not having proved the will, he would not accept of the money; afterwards the plaintiff made the like tender to another of the executors, who likewise refused to accept of it, not having proved the will, but he objected to the legality of the tender, not being in money; afterwards all the four executors proved the will; and the bill was brought to redeem on payment of 4400*l.* and interest to the 23d of October, being the time mentioned in the note, and that the plaintiff might not be obliged to pay interest beyond that time, as the defendant's executors insisted he ought, and it was held by my lord chancellor, that this tender in a bank note was not, strictly speaking, a legal tender, but since it was proved the plaintiff offered to turn it into money, that made it a good tender; 2dly, it was clearly agreed, that any or either of the executors before probate, might have received and given a good discharge for the money, especially when, as appeared in this case, they afterwards proved the will, and so were executors *ab initio*; 3dly, that tho' they were executors only in trust for the daughter, who was an infant, yet none of them could be in a better case than sir William Dodwell himself could have been, if he had been living; and such tender, under these circumstances, would have bound him, so it will his executors and devisee, and therefore decreed a redemption on payment of the 4400*l.* and interest to the 23d of October, the time mentioned on the note, and no longer, and no costs on either side, and the infant heir at law, on payment of the money to the executors, was to convey the inheritance descended to her according to the act, 7 Ann, for obliging infant trustees to assign and convey. Hil. 1729, sir John Austen and the executors of sir William Dodwell, at my lord chancellor's.

Where there are several Mortgagees of the same Estate, what Remedy they have against the Mortgagor and against each other.



1st.

IF a man mortgages lands by a defective conveyance, and afterwards mortgages to a second person by an assurance that is good and effectual, with notice, the second shall prevail, because that carries the legal title, and equity will not interpose when both are equally upon a valuable consideration; but if a man mortgages by a defective conveyance, and there are subsequent creditors whose debts did not originally affect the land, equity will supply such defective conveyance against such subsequent incumbrances, who acquired a legal title afterwards, for since the subsequent creditors did not originally take the lands for their security, nor had in view an intention to affect them, when afterwards the lands are affected, and they come in under the very person that is obliged in conscience to make the defective security good, they stand in his place, and shall be postponed to such defective conveyance. *Mich. 1670, Burgh and Francis by sir Heneage Finch, lord keeper.*

2d.

The mortgagor being son-in-law to the mortgagee, having entered and afterwards suffered the mortgagor to take the profits for several years without requiring interest, it was held by the court, that the interest of the first mortgagee should not affect the lands, so as to keep out the second mortgagee longer than he would have been had the interest been duly paid, it was likewise held, that if a mortgagee after notice of a subsequent mortgage, joins with the mortgagor in a sale of the lands to a stranger, the money received by either for the purchase, shall sink so much of the mortgage money. *Mich. 1691, Bentham and Haincourt.*

K

3d.

3d.

If A. has a first mortgage and B. a second, and subject to these mortgages, the estate is settled on C. for life, remainder on D. an infant; A. may bring a bill to foreclose, though B. has not the like remedy over against D. who, because of his infancy, cannot be foreclosed. *Mich. 1705, Draper and Jennings, 2 Vern. 518.*

4th.

If a first mortgagee brings a bill to foreclose the mortgage, and an account is directed and taken between them, such account shall bind the second mortgagee, tho' he was no party to the bill, if there was no fraud or collusion in the taking of it. *Trin. 29, Car. 2, Needler and Deeble, 1 Chan. Ca. 299.*

5th.

If a man mortgages certain lands to one man, and mortgages those lands with some others to another, though this seems to be a case omitted out of the statute against clandestine mortgages, yet if it appears to be a contrivance to evade it, as, if an acre or two of land were only added, this will not exempt it, but a person who will take advantage of the statute, must be an honest mortgagee, and therefore if a man has used any fraud or practice in obtaining a second mortgage, he shall not have the benefit of the statute. *2 Vern. 589, 590.*

6th.

If A. being about to lend money to B. on a mortgage, sends C. to inquire of D. who had a prior mortgage, whether he had any incumbrance on B.'s estate, and it is proved that C. went to him and spoke to him accordingly, D's mortgage shall be postponed. *2 Vern. 554, Vide 2 Vern. 370.*

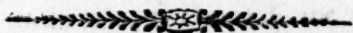
7th.

One Goff being possessed of the *thatched house* at St. James's, on a building lease for 60 years, mortgages it to Dr. Lancaster and one Habberfield, for securing 600*l.* which the defendant afterwards paid off, and advanced to Goff

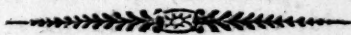
Goff 600*l.* more, and took an assignment of this mortgage, but had not the original lease delivered to him till some days after the assignment; Goff afterwards being in a declining way, proposed to borrow of the plaintiff 350*l.* on a mortgage of a vault and two rooms, part of the mortgaged premises, and on a treaty for that purpose, one Remington who acted for the plaintiff, desired to see the original lease, Goff told him that he had it not by him, but that his lawyer kept all his writings for him, as not thinking it safe to trust them in his own house, where all sort of company resorted, upon which Goff goes to the defendant, who was an attorney in the city, tells him he was about agreeing with a person for the rebuilding part of the premises, at so much a foot square, which would better his security, and desired him to let him have the original lease, that he may see the dimensions of the house, the defendant would not trust him with the lease in his own power, but goes along with him to the thatched house, and after he had been there some time, Goff sends for the plaintiff and Remington, told them he had now the original lease which they might see, and upon their coming to his house, Goff goes into the room where the defendant was, and desires him to let him have the lease, which he carries to the plaintiff and Remington, and they being satisfied therewith, lend him the money, and took a mortgage of the vault and two rooms, insisting at the same time, to have the original lease delivered to them, but Goff urging that it concerned much more than the plaintiff had in mortgage, and that he could not part with it, the plaintiff permitted him to keep it, and he thereupon in about an hour's time, delivered it again to the defendant, without acquainting him with what he had done, and the defendant swore expressly in his answer, that he had no notice of this transaction, or of the plaintiff's mortgage; afterwards the plaintiff lent Goff a farther sum of money, and prevailed on the defendant to let him have the original lease a second time, but there was no proof that the defendant knew the occasion of it, and he by his answer expressly denied his having notice of it; afterwards Goff failed, and thereupon the defendant brought his ejectment and recovered; and this bill was brought to have the defendant's mortgage postponed, that here was a manifest fraud on the plaintiff, and that the defendant was privy to it, and at the rolls the plaintiff had a decree accordingly, but on appeal the decree was reversed,

but

but my lord chancellor said, if a man makes a mortgage, and afterwards mortgages the same estate to another, and the first mortgagee is in combination to induce the second mortgagee to lend his money, this fraud without doubt, will in equity postpone his own mortgage; so if such mortgagee stands by and sees another lending money on the same estate, without giving him notice of his first mortgage, this is such a misprision as shall forfeit his priority, but here is no manner of proof that the defendant knew any thing of the plaintiff's lending his money; nay if there had, yet the plaintiff appears guilty of so much a grosser neglect, that he ought not to prevail, for the defendant intrusted Goff with his original lease but for a very little while; the plaintiff takes his word that he could not part with it, and leaves it wholly in his power to go on in defrauding whom else he had a mind to, besides it appears the defendant was imposed on by Goff, for he parted with the lease only to better his own security, and had the most specious pretence that could be for it, and therefore it cannot without manifest proof, be objected to him, that he let Goff have his lease to shew the plaintiff, or with a design to draw in the plaintiff to lend his money, and dismissed the bill with costs, unless the plaintiff should within such a time, redeem the defendant; and for precedents were cited, *Raw and Pott*, the countess of *Bridgewater* and *Russel*, and one *Clare's* case of *Yorkshire*, *Mich.* 1716, *Peter and Russel*.



*Where a Mortgagee may protect himself by buying in
precedent Incumbrances.*



1st.

IF a man mortgages land to A. and afterwards makes a subsequent mortgage to B. without notice at the time of making the mortgage, and B. purchases in a precedent mortgage which stands out at law, tho' nothing on it be due in equity, or a statute whereon money is due, which he extends, he shall hold the land till he is satisfied what is due upon both securities, though he had notice of A.'s mortgage before his second purchase of the prior security, because, having at first innocently lent his money, he may do what he can to secure that money from being lost; and when he hath purchased in the prior incumbrance, he hath a title at law, and being equally on a valuable consideration with the mean incumbrancer, it is but just that equity should leave it in the same manner that it stood at law, for there is no room for equity to interpose, to take away the security the law had given, where the person that has the security comes into the title without any corruption at all, and it were partiality and not equity to interpose, where the security gives the fair lender a good and legal title, and it was all as one, whether such third lender or purchaser takes in a mortgage, that is an interest vested, or a statute that is only a charge; for both are real liens, and sufficient to overthrow the title of the mesne incumbrancer, or whether money be due on the first incumbrance or not, since that does not alter the legal title. *Marsh and Lee, 2 Vent. 337, 338, 1 Chan. Ca. 162, 163, S. C. 1 Chan. Ca. 36, Hard. 173, 1 Chan. Ca. 149, 150, 2 Chan. Ca. 208, 1 Vern. 187, 1 Chan. Ca. 20, 166, 2 Vern. 157, 159.*

2d.

A man mortgages the manor and rectory of D. to A. and afterwards mortgages the rectory to B. without notice
of

of the mortgage to A. and then B. purchases in a precedent incumbrance on both the manor and rectory, and the question was, when B. had received all the money due on the first security, whether he should receive any more profits of the manor, or only keep the incumbrance on foot to protect the rectory, which was argued before Finch, lord keeper, in the presence of Wild and Twisden, and the two judges held, that B. should not receive the profits of the manor after the first incumbrance was satisfied, because he had taken the rectory only for his security of that sum, and it would be unreasonable to give him a security beyond what he had in his original intention, but the keeper over-ruled it, for that when he had purchased the precedent incumbrances, that comprehended both the manor and rectory, and were forfeited at law, and therefore, it was reasonable that the estate should not be taken away by the mesne incumbrancer, in a court of equity, which by no method could be evicted at law, unless such person would do equity, and pay the whole money due on both securities. 1 *Chan. Ca.* 201, 202.

3d.

If a man lends 600*l.* on a mortgage, and afterwards discovering that the estate is pre-mortgaged to J. S. he gets in an old satisfied incumbrance, and brings his bill against J. S. to redeem or be foreclosed, he need not prove the actual payment of any money for such precedent incumbrance, the having the deed, or an acquittance being sufficient, altho' it is objected that J. S. is equally a purchaser with him. 2 *Vern.* 279.

4th.

If a prior mortgage or statute be bought in, pending a bill brought by A. against the mortgagor, and B. who buys in such precedent statute or mortgage to foreclose, tho' this purchase be *pendente lite*, yet it will protect B. he being at liberty to do what he can for his own security. *Trin.* 1687, *Taylor and Leigh*, 2 *Vern.* 29.

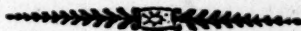
5th.

But where A. made a mortgage to B. and afterwards a commission of bankruptcy was taken out against him, and the

the commissioners made an assignment of his estate, and then C. lent the bankrupt 2000*l.* on a second mortgage, having no notice of the bankruptcy, tho' he afterwards got in the first mortgage, yet it was held by two lords commissioners against one, that this prior mortgage should not protect the mortgage subsequent to the bankruptcy, for every one is bound to take notice of a commission of bankruptcy. 2 *Vern.* 157, 160.

6th.

And tho' a purchaser of mortgagee may buy in an incumbrance, or lay hold on any plank to protect himself, yet he shall not protect himself by the taking a conveyance from a trustee, after he had notice of the trust, for by taking such conveyance, he becomes the trustee himself. *Vide* 2 *Vern.* 271.



Where

Where a Person who comes to redeem must do Equity to the Mortgagee before he will be admitted.



1st.

IF a mortgagor borrows more money of the mortgagee upon bond, where the heir is bound, and dies, the heir of the mortgagor shall not redeem without paying the bond debt, as well as that secured by the mortgage, because when the condition is broken, so that the term or interest becomes absolute in the mortgagee; if the heir of the mortgagor will have equity, he must do equity, by the payment of the whole money due to the mortgagee, and this is called a rebutter; but if the bill was exhibited by the mortgagee to foreclose, there, if the heir of the mortgagor tender principal and costs, it sufficeth without tender of the money due on the bond, because such bond was not originally any *lien* on the land itself, and if that be tendered for which the land was originally pledged, there is no reason to debar the heir of his right of redemption. 2 Chan. Ca. 164, 2 Chan. Rep. 247, 1 Vern. 245, 2 Chan. Ca. 194, 195.

2d.

So where a husband and wife levy a fine of the wife's land, to enable them to take up the sum of 400*l.* and they make a mortgage for it, and after the mortgage is forfeited, the husband pays in part of the mortgage money, but afterwards borrows again the same sum of the mortgagee, it was decreed, that the mortgagee having the estate in law in him by the forfeiture of the mortgage, he should hold the land against the heir of the wife, until the whole money was paid; and if the heir would not pay in the whole principal, interest and costs, he should be foreclosed. Pasch. 1682, Reason and Sacheverell, 1 Vern. 41.

3d.

So if a lessee for years mortgages his term, and afterwards borrows money of the mortgagee on bond, and dies, his executor shall not redeem without paying the bond as well as the mortgage. 2 Vern. 177.

4th.

4th.

The plaintiff pawned some jewels to K. who signed a writing, that they were to be redeemed in 12 months, otherwise, for the 110*l.* lent, they were to be as bought and sold; K. within a short time after, delivers over the jewels together with some plate of his own, to M. a book-feller, as a pledge for 200*l.* and K. afterwards borrowed 38*l.* and 50*l.* of M. on promissory notes, to be repaid on demand, and M. by answer insisted, it was agreed that the pledge would be a security, as well for the money on the notes, as for the money first lent, but could make no proof of any such promise or agreement, and though a redemption was decreed, yet it was on payment of all that was due to M. as well upon the notes as on the pawns; but the goods of K. which were pawned, were to be first applied as far as the value of them would extend. *Mich. 1715, Demainbray and Metcalf.*

5th.

If A. is bound in several bonds with B. as his surety for 4000*l.* and A. conveys the manor of C. to B. by way of mortgage, to counter secure him against the bonds for 4000*l.* and A. dies, and after D. the son and heir of A. becomes bound with B. for 2000*l.* more, but there was no agreement that the mortgage should be a security to D. against the bonds for 2000*l.* and after B. dies, his heir shall not be permitted to redeem upon payment of the 4000*l.* only, but must save D. harmless, as well touching the 2000*l.* as the 4000*l.* for he that would have equity help where the law cannot, must do equity to the party against whom he seeks to be relieved. *Hil. 19 & 20, Car. 2, St. John and Holdford, 1 Chan. Ca. 97.*

6th.

If A. acknowledges a statute to B. for payment of 800*l.* with interest, which being forfeited, and the lands extended upon it; A. for a valuable consideration, settles the same lands in tail, and after borrows money of B. and by articles it is agreed, the statute and extent shall stand a security for the last money, and after A. dies, and the 800*l.* with interest is satisfied by perception of the profits, yet the issue

74 *Where a Person must do Equity to the Mortgagee.*

in tail shall not be relieved against the penalty of the statute, for though the heir has an equity, by reason of the tail made upon a consideration, yet the money lent raises an equity for B. so that B. hath both law and equity; whereas the issue in tail hath equity only till the penalty is satisfied. *Mich. 14, Ca. 2, fir John Hedworth and Primate. Hard. 318.*

7th.

If a man makes two several mortgages of several lands, and dies, and one of the mortgages is of an entailed estate, or is deficient in value, the heir of the mortgagor shall not be admitted to redeem one without the other. 2 *Vern. 207.* Neither shall the mortgagor himself redeem the one and leave the defective mortgage, but he must take both together. 1 *Vern. 29, 245, S. C.*

8th.

The plaintiff as assignee of a statute of bankruptcy, brought his bill to redeem a mortgage of the manor of Newington in Kent, made by the bankrupt to the defendant; the defendant by answer, insisted, that he first lent the bankrupt 200*l.* on a mortgage of a particular tenement, and afterwards lent him 300*l.* on a mortgage of the manor of Newington, which was of better value than the money due, but the first mortgage was deficient in point of value, and it was held, that if the plaintiff will redeem one he must redeem both. *Hil. 1692, Pope and Onslow, 2 Vern. 286.*

9th.

If a man has a debt owing to him by mortgage, and another on bond from the same person, he cannot tack them together against the mortgagor, but he shall be let into redemption on payment of the mortgage only; but the heir in such case, shall not be let into a redemption without payment of both, because the land in his hand is chargeable with the bond, even at law, and since the statute against fraudulent devices, the devisee of equity of redemption is in the same case with the heir, and cannot redeem without payment of both, because the statute makes such devise void as against creditors, and then the devise stands in the same place as the heir must have done if no devise had been made, but before that statute, such devisee would not be liable to the bond debt. *Trin. 1 Geo Challis and Cashorn.*

10th.

10th.

A. mortgaged his estate to B. and then assigned the equity of redemption to C. afterwards D. obtained a judgment against A. and B. the mortgagee assigns to D. his mortgage, and then C. tenders the money due on the first mortgage to D. who had notice of the assignment of the equity of redemption upon his purchasing in his first mortgage, and it was here objected, that D. having the legal estate in him by the assignment of the forfeited mortgage, and C. having only an equitable interest, not supported by the legal estate, that if C. would have equity, he ought to do equity, by paying off both monies to D. but it was answered and resolved by the court, that C. should redeem, paying only the money due on the mortgage, and not what was due on the judgment, because the equity of redemption was never bound by the judgment, for the judgment was not confessed, so as to become a real *lien* upon the estate, at the time when this equity was assigned; and therefore, the judgment could never charge or affect it, and consequently C. purchased an estate not bound by the judgment, and by consequence the judgment-creditor by purchasing in the prior mortgage, could never defeat the interest of C. *Trin. 1708, Breerton and Jones at the rolls.*

11th.

It was also declared, that if a person that had a first mortgage should, without the consent of the mortgagor, purchase in a subsequent judgment, that a mesne mortgagee, or assignee of the equity of redemption, should not be obliged to pay the money due on both securities, in order to redeem, because such transactions of the mortgagee, was only to load the estate without the consent of the owner, when he had no prospect of bettering his own security. *Breerton and Jones.*

12th.

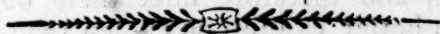
If the father is tenant for life, remainder to his son in tail, and the father mortgages to J. S. who finding his title defective, sends 100*l.* to the son, and takes a mortgage from him of the same land, &c. the son may redeem, paying the 100*l.* only, for the son is a stranger to the estate of his father. *Hil. 31 & 32, Car. 2, Bromley and Hammond, 2 Chan. Ca. 23.*

13th.

13th.

So where a lunatick, before he became such made a mortgage of good part of his estate for 50*l.* and the committee transferred this mortgage, and took up 3 or 4 hundred pounds more upon it, my lord chancellor declared the mortgage should stand a security for 50*l.* only. *Mich. 1614. Foster and Merchant. 1 Vern. 262.*



Mortgage Money, to whom to be paid.

1st.

WHERE a mortgage was made upon condition that the mortgagor paid a certain sum to the mortgagee, his heirs, executors or administrators, that then the mortgagor should re-enter, and the day passed without payment, and the mortgagee died; great doubt was, whether the money should be paid to the heir or executor of the mortgagee; and it was formerly held, that where the heir was named in the condition, and no bond or covenant given to make it appear a personal matter; and there was no deficiency of assets to pay creditors, that in such case, the heir parting with the benefit descended to him, should have the money on the mortgage. 1 *Chan. Ca.* 88, 1 *Chan. Rep.* 181, 182, 3.

2d.

But afterwards it was truly settled in several cases by lord chancellor Finch, that the money should go to the executors or administrators, and not to the heir; and the reason was because equity follows the law; and at common law, if conditions or defeasances of mortgages are so penned, as no mention is made either of heirs or executors, in that case the money ought to be paid to the executors, because the money came out of the personal estate, and therefore ought to return thither again; but if the defeasance appoints the money to be paid to the heir or executor disjunctively, if the mortgagor pays the money precisely at the day, he may elect to pay it either to the heir or the executor; but where the precise day is past, and the mortgage forfeited, all election is gone in law, for in law there is no redemption, and when the case is reduced to an equity of redemption, it were perfectly against equity to revive the election of the mortgagor, because that would only tend to the delay of the payment of the money as long

as he pleased, and end in compositions to pay the money into that hand which would use him best; and to say that the election should be in the court, would be to place an arbitrary power in it, which would tend to the inconvenience of the subject, since no man could safely pay the money in such cases, without applying to the court by a suit in equity; and therefore since there ought to be a certain rule, a better cannot be chosen than to come as near as can be to the rule and reason of common law, and as the law always gives the money to the executor where no person is named, so where the election to pay, either to the heir or executor, is gone and forfeited in law, it is all one as if neither heir nor executor were named in the condition; and then equity following the rules of the common law, ought to give it to the executor, for in natural justice and equity, the principal right of the mortgagee is to his money, and his right to the land is only as a deposit or pledge for his money, and therefore the money ought to be paid to the proper hand, that the mortgagee has appointed receiver of it, and that is his executor; and then the heir, who is only a trustee to keep the pledge, ought to deliver it back to the mortgagor, and though the heir has the use and benefit of the land till redeemed, yet he has it only as a pledge, and therefore is a trustee to restore it when the money is paid to the proper hand, and the heir himself, though he be proper to keep the pledge being land, yet he is not proper to receive the money it being purely personal, and it is not hard that the heir should part with the land without having the money that comes in lieu of it, because the money was originally parted with from the personal estate, and had immediately come into the hands of the executor, had it not been placed out on his real security; and therefore it has since been decreed, whether the executor has assets or not, that the mortgage money should be paid to him. 1 *Chan. Ca.* 283. 2 *Chan. Ca.* 50, 51, 220. 2 *Vent.* 348, 351. 1 *Chan. Rep.* 183. 2 *Chan. Rep.* 155, 242. 1 *Chan. Ca.* 88. *Handl.* 467. 1 *Vern.* 170, 412.

3d.

If the heir of the mortgagee forecloses the mortgagor, the executor being no party, upon a bill by the executor against the heir of the mortgagee and the mortgagor, the land will be decreed the executor, *Gobe* and the earl of *Carlisle*. 2 *Vern.* 66. cited to be adjudged.

4th.

4th.

But if the executor of the mortgagee, after a foreclosure by the heir, brings a bill to have the benefit of the mortgage, the heir if he thinks fit may take the benefit of the foreclosure to himself, paying the executor the mortgage money and interest. 2 *Vern.* 67. per *Curiam*.

5th.

If there be a mortgage in fee of a long standing, and there are two descents cast since the mortgage was made, and tho' the mortgagor by answer, says he will not redeem, yet the mortgage should go to the executor and not the heir, the equity of redemption not being foreclosed or released. *Jabor and Greaves.* 2 *Vern.* 367.

6th.

But if a mortgage in fee enters for a forfeiture and after 7 years enjoyment, absolutely sells the land to J. S. and his heirs, the estate shall not be looked upon to be a mortgage in the hands of J. S. so as to make it part of his personal estate, but it shall be for the benefit of his heir. *Mich.* 1684. *Cotton and Iles.* 1 *Vern.* 271.



Mortgagee answerable for the Profits, and how to account.

1st.

THE mortgagee is answerable in equity when he comes into the possession of the lands, for the profits that he made of the lands, and not for the profits that he might have made, unless there were fraud, for it is the fraud and laches of the mortgagor that he would let the lands lapse into the hands of the mortgagee by the non-payment of the money, and when it doth, he is only a bailiff for what he doth receive, but is not bound to the trouble and pains of making the best of what is anothers. *Toth.* 133. 1 *Vern.* 476, 477.

2d.

If a mortgagee in possession assigns over his mortgage without assent of the mortgagor, the mortgagee is bound to answer the profits both before and after the assignment, though assigned only for his own debt, for he is under a trust to answer the profits of the pledge, and it is a breach of trust to assign such pledge to a person insolvent, but quære, if the mortgagor hides, so that he cannot be served with a subpœna to foreclose, whether the mortgagee may not assign, and not be answerable for the profits after assignment. 3 *Chan. Ca.* 3.

3d.

A mortgagee shall not be bound by any proof that the land was worth so much, unless you can likewise prove that he did actually make so much of it, or might have done so, had it not been for his wilful default, as if he turned out a sufficient tenant that held it at so much rent, or refused to accept a sufficient tenant that would have given so much for it. 1 *Vern.* 45.

4th.

If a mortgagee manages the estate himself, there is no allowance to be made him for his care and pains, but
if

Mortgagee answerable for the Profits, and how to account. 81

if he employs a skilful bailiff, and gives him 20*l.* per ann. that must be allowed, for a man is not bound to be his own bailiff. 1 *Vern.* 316.

5th.

If an infant by his guardian endeavours to overthrow the mortgage by a supposed entail, and after a special verdict and great agitation at law, the mortgagee prevails, and the infant brings his bill to redeem, the mortgagee having sworn he paid and expended above 120*l.* in defending his mortgage at law, although he had but 60*l.* costs allowed him there, shall not be held down to the taxation of law, but shall, on the account, be allowed all he laid out or expended; and if the mortgagee in this case fearing that his mortgage would be defeated at law, gets administration as principal creditor in the spiritual court, he shall be allowed the costs expended there also. *Hil.* 1705. *Ramsden and Langley.* 2 *Vern.* 536.

6th.

The mortgagee obtained judgment in ejectment, and entered on the mortgaged premises, and thereby prevented other creditors that had subsequent incumbrances from entering, and yet permitted the mortgagor to take the profits; and the other incumprancers coming to redeem him, the court ordered the mortgagee should be charged with all the profits he had or might have received since his entry. 1 *Vern.* 270.

7th.

So where a bankrupt before he became such, having made a mortgage of his estate, and the assignee of the statute brought an ejectment for recovery of the lands comprised in the mortgage, and the mortgagee refused to enter, but suffered the bankrupt to take the profits, and to fence against the assignees with the mortgage; and it was held that the mortgagee should be charged with the profits from the time of the ejectment delivered. *Mich.* 1784. *Chapman and Tamer,* 1 *Vern.* 267.

8th.

A. mortgaged the manor of F. to B. to which an advowson was appendant, B. brought a bill to foreclose, the church became void, and he likewise brought a quare
M impedit

82 *Mortgagee answerable for the Profits, and how to account.*

impedit at law; and on a motion to stay the proceedings on the quare impedit, the court held, that though A. had no bill, yet being ready and offering to pay the principal, interest and costs, if B. will not accept his money, interest shall cease, and an injunction to stay proceedings in the quare impedit granted; for the mortgagee can make no benefit by presenting to the church, nor can account for any value in respect thereof to sink or lessen his debt, and the mortgagee therefore in that case is but in the nature of a trustee for the mortgagor, *Mich. 1700. Amhurst and Dawling. 2 Vern. 401.*



How the Assignee of the Mortgagee is to Account.

1st.

IF the mortgagee assign his mortgage, and the mortgagor comes to redeem against the assignee, all monies really paid by the assignee, either as principal or interest, shall be principal to the assignee, and shall bear interest, otherwise it is if the assignee had not paid the money, and the assignment was only colourable, in order to load the mortgagor with compound interest. *Smith and Pemberton. 1 Chan. Ca. 67, 258. 1 Vern. 169. 2 Vern. 135.*

2d.

If a stranger gets an assignment of a mortgage for less than is due, the mortgagor, or his heir, shall not redeem without paying all the money due; but if a man purchases the mortgaged lands without notice of this incumbrance; whether he has not an equity to redeem them, for what was really paid by the stranger. *Quare. 1 Vern. 336.*

3d.

But if there are subsequent incumbrances or creditors in the case, a man who buys in a prior incumbrance, shall against them be allowed only what he really paid, though there was in truth a greater sum due. *1 Vern. 476.*

BILLS FOR AN ACCOUNT.

Complainant takes out Administration to his Grandfather and Grandmother, after he and his Brothers and Sisters attain their full Ages, and exhibits this Bill against the Administrators, in trust durante minori Etate, to compel them to Discover and Account.

To the Rt. Hon. &c.

COMPLAINING, &c. sheweth, &c. your suppliant B. T. &c. administrator of the goods, chattels and personal estate of sir T. J. late of A. in the county of S. knight, and also of dame P. T. widow and relict of the said sir J. T. both deceased, your suppliant's grandfather and grandmother; that the said J. T. and dame P. T. being in their respective life-times, and at the times of their several deaths, possessed of a great personal estate, consisting in ready money, rings, jewels, plate, beddings, linen, woollen, hangings, household stuff, bills, bonds, judgments, statutes, recognizances, mortgages and other securities for money, amounting to a very great value; and particularly the said sir J. T. was possessed of one bond of obligation, entered into to him the said sir J. W. late of S. in the county of K. knight, deceased, of the penalty of two thousand pounds, or other great penalty, conditioned for the payment of one thousand pounds, interest, within some short time after the marriage of T. W. esq; eldest son and heir of the said sir T. W. or on the death of sir T. W. which should first happen, being part of the marriage portion which sir T. W. had agreed to give sir J. T. upon the marriage of H. T. his eldest son, and K. daughter of sir T. W. and also of and in another bond or other securities, entered into to the said sir J. T. on or about the day of by T. B. late of Westminster in

in the county of Middlesex, esq; deceased, of the penalty of six thousand pounds, for the payment of three thousand pounds and interest, within some short time after, as by the said bonds, with the conditions thereof, had your suppliant the same to produce, would more fully and at large appear, and to which your suppliant for more certainty refers; and your suppliant further sheweth, that the dean and chapter of the cathedral and metropolitical church of Canterbury, did by their indenture of lease, under their common seal, bearing date about the twenty ninth day of May, in the sixteenth year of the late king James over England, &c. for themselves and their successors, demise and grant unto the said sir J. T. his executors and administrators, all that parsonage of B. in the county of S. with all houses, buildings, lands and edifices, tythes, oblations and all other commodities, with the appurtenances thereunto belonging, or any wise appertaining, being of the yearly value of three hundred pounds, in as large and ample manner as any other farmer thereof, had held and enjoyed the same, to hold the same under a small yearly rent, for and during the lives of H. T. F. T. your suppliant's father, and R. T. sons of the said sir J. T. and the life of the longest liver of them, as by the said indenture of lease, wherein are contained, divers grants, reservations, conditions and agreements, had your suppliant the same to produce, relation being thereunto had, it would more fully and at large appear, by virtue whereof, the said sir J. T. entered upon and enjoyed the said parsonage during his life; and your suppliant further sheweth, that the same dame P. having at the request of sir T. J. joined in a fine or conveyance of certain lands settled upon her for jointure, or whereunto she was entitled to have her dower, the said sir J. T. intending to recompence the said dame P. therein, or for other good and valuable considerations, did by indenture of assignment, bearing date, assign and transfer the remainder of the term in the original lease to him granted, during the lives aforesaid, unto the same dame P. her executors and administrators, or some persons in trust for her, and her executors and administrators, or otherwise dispose of the same, so that she the said dame P. her executors and administrators, might after his death, have and receive the whole benefit thereof, as also the right of renewing and disposing thereof as she pleased; and your suppliant further sheweth, that the said sir J. T. dying in or about the year one thousand
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six hundred and fifty, she, the said dame P. or the trustees on her behalf, entered on the said parsonage of B. and held and enjoyed the same, and received the rents and profits thereof during her life; and your suppliant further sheweth, that the said F. T. your suppliant's father, having been a great sufferer in the times of usurpation, as being chaplain in ordinary to his late majesty king Charles the first, of ever blessed memory, and dying under imprisonment, leaving your suppliant and several other children infants, the said dame P. considering of the condition of your suppliant's mother, and your suppliant's brothers and sisters, did resolve to settle the said lease, and benefit of renewing thereof, so that the same or part of the profits might come to your suppliant's said mother, and your suppliant and his brothers and sisters after her decease, and in order thereunto, one R. O. of D. in the county of H. esq; having married D. daughter of sir J. T. who being well affected to the late rebellious government, or at least so as to avoid sequestration, she the said dame P. reposing great trust and confidence in him the said R. O. did desire his assistance in protecting of the said estate, for the benefit of your suppliant's said mother and children, who then lived remote from her relations, in the north of England, which the said O. undertook accordingly, and thereupon the said dame P. did not only deliver unto the said R. O. all or the greatest part of the personal estate aforesaid, but also the lease of B. parsonage, for him to receive the rents and profits thereof, paying the rent thereout reserved, and to return the overplus of the rent to your suppliant's mother, and in case his majesty should be restored to his kingdom and regal government, then to renew the said lease, in trust for your suppliant's mother and children, and soon after the death of sir J. T. dame P. died intestate, leaving the said R. O. intrusted as aforesaid; and your suppliant further sheweth, that immediately after the death of sir J. T. and dame P. a combination and confederacy was entered into by and between the said R. O. and K. the relict of H. T. and with other persons hereafter named, and the said R. O. did propose to the said H. P. who was a shopkeeper in C. in the county of S. not then responsible for what he should be intrusted with, to take out letters of administration of the said sir J. T.'s estate, in trust for the grandchildren of the said sir J. T. which the said P. did undertake and do accordingly, in hopes to get his debt discharged thereby, which he owed to sir J. T.

at the time of his death, and to swallow up all or the most part of the personal estate of the said sir J. T. or at least to have an equal or some part or share with the said O. and the rest of the confederates, and by virtue of such administration or otherwise, he the said P. or O. and other of the confederates, possessed him and themselves of all the goods and chattels, rights and credits of the said sir J. T. and dame P. during the minority of your suppliant and the rest of the grandchildren of the said sir J. T. which being an administration, *durante minori ætate*, is since revoked, and new administration granted to your suppliant B. T. of the said estates of the said sir J. and dame P. T. by virtue whereof, he is well entitled to all and singular of the personal estates of the said sir J. and dame P. T. which they died possessed of and interested in, and ought to have an account of the same, and the said R. O. notwithstanding the trust reposed in him by the said dame P. as aforesaid, immediately after her death, did privately endeavour to procure administration of her estate, to be granted to himself in his own right, but being discovered by some relation of the said sir J. T. he then pretended he was a creditor, but not being able to make out any thing due to him, the prerogative court after great controversy and contests, refused to continue his administration, but repealed the same, although he much contended for it, whereupon, being informed that he was to make restitution of all the estate of the said dame P. he took administration during the minority of your suppliant and the rest of his brothers and sisters, by virtue of the aforesaid administration or otherwise, as by the proceedings in the prerogative court, to which your suppliant for more certainty refers himself, may appear, but never so much as mentioned one word thereof to your suppliant, notwithstanding your suppliant hath been very well known to him above fourteen years, and was very desirous the matters in question might have been accommodated in a friendly manner; and your suppliant further sheweth, that the said O. and P. having gotten such several administrations as aforesaid, and possessed themselves of the said several estates, they then by combination and confederacy with the other persons hereafter named, went hand in hand in all the proceedings relating thereunto, or to the recovering or discharging of any debts due or owing to the said several estates; and your suppliant further sheweth, that the said P. having by virtue of his administration, by the means
of

of O. as aforesaid, or otherwise, sued the said sir T. W.'s bond, and obtained a judgment thereupon for above two thousand five hundred pounds, together with costs, and the said sir T. W. having about the year of our Lord, one thousand six hundred and fifty nine, sold an estate of the said sir T. W. called S. in the county of K. to one sir J. B. knight, for which he was to pay one thousand two hundred pounds, and the said sir J. B. being informed of the said judgment, that the said P. was administrator to the said sir J. T. had obtained upon the said estate, sir J. B. insisting to have, and accordingly kept so much of the purchase money as would discharge, or at least indemnify him against the aforesaid judgment, until the extent should be taken off, and what was due thereupon should be paid and satisfied, which the said sir T. W. afterwards from time to time promised to do, and to procure the said P. to discharge and satisfaction acknowledge, but P. and O. contesting between themselves who should have the money, each pretending a right thereunto, or to some part thereof, it being then answered, that the said P. who was at that time very poor, had assigned the said judgment, and the money due thereon, to one T. W. or some other person well known to the confederates, or some of them, either absolutely, or for securing some great sum of money owing by the said P. so that by those, or such like, or some other means, the said money due upon the said judgment, upon the said bond, continued in the hands of the said sir J. B. for some time, who would not pay the same until the several pretences were accommodated and settled, and in truth, at last he began to question the title of the said P. and O. and understanding that P. was only an administrator, *durante minori etate*, and set up by O. so that it was dubious whether they could discharge a real debt, he did then refuse to pay the same, and the said T. W. did refuse to allow the whole debt out of the purchase money, but insisted to have, and accordingly had, some considerable part thereof, left in their or some other persons hands, to be secured from any damage they might sustain, and thereupon, there was an agreement made between the said P. and O. sir J. B. T. W. and other the confederates, to share and divide the money due upon the said bond of sir T. W. of and from the same, and the said P. and O. discharged the estate of the said T. W. of and upon the receipt of monies due upon the bond of T. B. of the penalty of six thousand pounds, for the payment of three thousand

thousand pounds and interest unto the said sir J. T. did discharge the same, or take other security, and also discharged several other debts belonging to the estate of the said sir J. T. and the said money received on the said extent, and the rest of the personal estates of the said sir J. T. and dame P. were shared and divided amongst the said confederates, and they severally ought to account for the same, but the said sir J. B. and T. W. pretend, that what money was left in their hands they have expended, by reason of the difference arising touching the same, and the said R. O. pretends, that what he received out of the monies recovered of sir T. W. was but four hundred pounds, two hundred pounds whereof, was for money he pretends he lent to said H. T. and at other times pretends that it was part of his wives portions, due to him from the said H. T. and that the other two hundred pounds, was for interest and charges which he paid for P. his suing of the said bond of two thousand pounds, and recovering of the said money, which said bond he sometimes alledgeth, was assigned over by sir J. T. to his late wife, two years before he married, for the securing of a one thousand pound portion, which was agreed to be given her in marriage, and then delivered to her, whereas in truth, there was no such provision or agreement made, nor could, so be he the said R. O. marrying without the consent of the said sir R. T. and dame P. and if any letter of attorney, or assignment of the said bond was made, it was made in trust, and to protect the same from sequestration, being about the time of the late unhappy troubles, and not for any real consideration, or at least to be added or diminished as they thought fit, as the said R. O. well knows, and hath often declared in manifestation thereof, and the said R. O. did marry without such consent; your suppliant sheweth, that after such intermarriage, by great importunity, the said sir J. T. upon promise and agreement with the said R. O. that if the said R. O. would settle on D. his wife, and her issue, two hundred pounds per annum, or some estate of some such value, he did condescend to give her eight hundred pounds and no more, but the said sir J. T. afterwards perceiving that the said R. O. could settle on her no estate of inheritance, and that in case he had eight hundred pounds, that or the greatest part thereof, must go towards the purchasing of her life as a jointure, in an estate of two hundred pounds per annum, wherein the said R. O. pretended he had a short term, and if he had

any other estate, it was very small, and his term almost expired, and therefore did refuse for some time to give him the eight hundred pounds, but afterwards did pay the same, which said eight hundred pounds, the said R. O. accepted as her portion, and received it from sir P. T. who had a far greater sum then in his hands of sir J. T.'s, being the purchase money of A. which he had sold to the said sir P. T. so that if the said R. O. had been to have the one thousand pounds, or any more than the eight hundred pounds, the said B. T. might also have ordered payment thereof, if so much had been intended for her portion to him, but your suppliant avers, that the said R. O. was not to have any more than eight hundred pounds. and so much he received and gave a discharge for, and the said R. O. did or ought thereupon, to have reassigned over the said bond to the said sir J. T. his executors and administrators, or whom he should appoint; and your suppliant further sheweth, that the whole money due upon the said judgment or extent was levied, or else the residue is still in the hands of the said sir J. B. H. P. T. W. and the rest of the confederates, and they in whose hands the same is, are severally liable, and ought in justice to pay and satisfy unto your suppliant, the whole money that was due for principal and interest at the time of the extent, with what interest and costs accrewed since thereby, the rather for that, the said sir J. B. and T. W. took notice of the title, which was only as an administrator *durante minori etate*, and the said P. and W. is, and ought to stand charged with all other the debts and personal estate of the said sir J. T. and dame P. T. whereof they designing to defraud your suppliant, have not to this day exhibited any inventory, which they ought to have done, or if they have, the same is very imperfect, and full of omissions and undervaluations; and your suppliant further sheweth, that the said sir P. T. pretending that the said sir J. T. and his son H. could not make out any good title to the estate called A. for that the said estate was upon the said sir J. T. his intermarriage to the said dame P. who was the daughter of sir W. L. settled on the issue of the said sir J. T. and dame P. whereupon the said sir P. T. insisted to have, and accordingly had left in his hands, some of the purchase money to indemnify him against incumbrancer, or any suits that should be brought against him by any issue of the said sir J. T. and dame P. and albeit he was never yet damnified one penny, yet he
hath

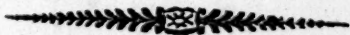
hath not to this day paid the same, or any part thereof, or if he hath paid the same, it was to such person or persons who had no power to receive the same, or to discharge him for the payment thereof; and the said sir P. T. hath also got into his custody, a deed of gift and an inventory of sir J. T. his personal estate, and several other deeds and specialties for money, pretending the same to be also, as well as the money in his hands, a security for his quiet enjoyment of the said estate; and the said sir P. T. also sometimes pretends, that he hath paid much more money than in reality he hath, and that he hath paid some debts of the said sir J. T. and other debts which he undertook to pay are not yet satisfied, when in truth there were very few debts paid by the said sir P. T. as your suppliant hath been credibly informed, and your suppliant having desired an account from the said sir P. T. of the monies aforesaid, yet he refuseth so to do, and pretends that P. hath given him a release; and your suppliant further sheweth, that the said R. O. by virtue of his administration, having possessed himself of the said lease, and all the personal estate of the said dame P. and thereby, by what he hath got by confederating with the said H. P. administrator to sir J. P. and other persons aforesaid, raised great sums of money, the said R. O. upon his majesty's most happy restauration, having the said lease by him as aforesaid, and being informed that his own majesty, out of his great clemency and kindness to all such, and the relations of such as had been sufferers for his late father, of blessed memory, had ordered and directed, and there were commissioners of the nobility appointed, and did sit in the Star chamber for that purpose, and that particular care should be taken, that they should have their just rights and claims preserved to them, and in particular, wherein they or their children, should be concerned or any ways interested in the renewing or taking any leases that were held formerly of the church, although the time might be before expired, that such sufferers or their children, or any other on their behalf or trust, or otherwise, might have benefit and advantage of renewing all such leases, wherein they or their ancestors should be concerned, or that if any other person did in their infancy, or when beyond the seas, renew any such lease, the children of those who had been sufferers for his said late majesty, repaying the person the money paid for the fine, should have the benefit thereof, or to the like effect; whereupon the said O. made his application

application to the dean and chapter of Canterbury, for and on the behalfs of your suppliant and his brothers and his sisters, for whom he was intrusted, and produced the said old leases, and made known to them his administration, and the trust for your suppliant and some of his brothers and sisters, and the great sufferings your suppliants said father had endured for his loyalty, by reason of the late rebellion, and the disabilities in estate, his widow and your suppliant and his brothers and sisters were by that means brought to, and that your suppliant's father was one of the church, and chaplain to his said late majesty as aforesaid, and therefore earnestly importuned them to set a moderate fine on the said parsonage, that they might have the benefit thereof in renewing the said lease, upon due consideration whereof, made by him unto the said dean and chapter, to whom or most of them, your suppliant's father was well known, the said R. O. obtained a lease from them of the said parsonage of O. to be made to him for three lives, at an easy and moderate fine and rent, in trust for your suppliant as aforesaid, and by virtue thereof, the said R. O. had continued the possession, received the profits, and held and enjoyed the parsonage to this day, being of the value of three hundred pounds per annum, and your suppliant well hoped, that now your suppliant and the rest of his brothers and sisters being of age also, and having released all their right and title in law and equity thereunto to your suppliant, being come of age and having taken out letters of administration to the said sir J. and dame P. T. the said R. O. should not only come to an account and pay what he had received by, of and upon the account, and out of the personal estate of the said sir J. and dame P. T. and to have restored unto your suppliant what remained in specie, and also to have accounted for the overplus of the rents and profits of B. parsonage as aforesaid, during the late usurping powers, but also since deducting to himself the fine and charges of renewing, and to have conveyed or assigned his interest in the said lease to your suppliant, according to the direction or intention of his said majesty, and the trust reposed in him as aforesaid; more especially, for that your suppliant hath many times in a fair and friendly manner offered unto to the said R. O. his coming to an account to pay him his principal and interest, and what should remain due to him upon account, and for what reasonable costs he had been at in and about the
procuring

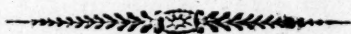
procuring and renewing of the lease of the said premises ; but the said R. O. combining and confederating with the said dean and chapter to defeat your suppliant of the said estate, they have permitted him several times since to renew the lease of B. parsonage aforesaid, pretending they knew nothing of your suppliant's title thereunto ; and the said R. O. and the rest of the confederates have wasted, consumed or converted all the personal estate of the said sir J. T. and dame P. T. to their own uses, or some other person or persons, or some of their privity or knowledge ; and sold some debts due by bond or judgment, and compounding others at a low rate ; and have also sold at low and inconsiderable rates, a great part of the goods and household stuff of the said sir J. and dame P. T. and if the said H. P. and R. O. did not possess themselves of the whole personal estate of the said sir J. and dame P. T. and improved it to the best advantage, they might have done it, for that they were administrators *durante minori etate*, and trustees for others, and ought to be accountable for the same, and ought not to have discharged any debt for less than what was really due thereon, but ought to account for the full debt due to the estate of the said sir J. and dame P. T. and also for the full value of the whole personal estate of the said sir J. and dame P. T. and in truth, there was no reason for the compounding or taking less for any debt whatsoever, especially that of sir T. W. which was secured by a judgment and extent, upon an estate of seven or eight hundred pounds per annum, all which doings of the said confederates are contrary to justice and equity, *in tender consideration whereof*, and forasmuch as your suppliant's witnesses which could prove all the matters and things to be true, are dead, or in remote parts unknown to your suppliant, nor hath your suppliant any relief but in this honorable court before your lordships, where matters of this nature are properly relievable and to be discovered ; **TO THE END THEREFORE**, that the said confederates, and every of them, may true and perfect answer make to all and singular the premises, and in particular, may set forth how much of the said estate of the said sir J. and dame P. his widow and relict, came to the possession of them or any of them, or any person or persons to the privity or knowledge of them, and how the same was disposed of, if not in the manner as aforesaid, and what became thereof, and of every part and parcel thereof ; and also, that the said sir R. O. and H. P. may set

set forth what induced them to take out administration to the said sir J. and dame P. and at whose instance and request did the said P. do the same, and what security had he, or was intended to be given him, and by whom, and what, and to whom did he give authority to sue by virtue of administration, and why did not the said O. take out administration to the said sir J. T. if he were a creditor, and why he should persuade P. to take out letters of administration to the said sir J. or did P. pretend any debt to be due to him from the said sir J. P. and how much, and whether did not the said dame P. at any time make a will or declaration of her intentions to dispose of her estate, she would leave when she died, and whether there were not some discourse to the purpose and effect before set forth, or to what other purpose and effect, or to whom did she mention or declare her intentions to be, to give or dispose of her estate at the time of her death, or any other time, when, where, and for what reason did he take out administration to the said dame P. and who opposed him therein, and for what cause or reason, and whether he did make appear any debt to be due to him from dame P. T. and how much, and for what, and why had not administration been granted to him as a creditor to the said dame P. and for what cause and reason was granted to him during the minority of your suppliants, and what money did he expend in and about contending for the said administration, and how long was the same in agitation, or what use or benefit did he make thereof, and what part of the said dame P.'s estate did he possess himself of before the administration, and how much after, and at what particular time doth he pretend the said lease, or any other thing, or what was given him then, or at any other thing, or what was given him then or at any other time, and why he had not acquainted your suppliant with the administration, during this twelve or fourteen years that he hath been acquainted with him, and with the renewing of the aforesaid lease, or of the transactions aforesaid; and that the said R. O. and the said dean and chapter may set forth, whether he did produce or mention the aforesaid administration taken by him, to the dean and chapter, or any other, and to whom at his time of taking a lease of them, of B. parsonage aforesaid, or produced or acquainted them, or any, and which of them, or any other, and whom, of his having the old lease, and upon what account had he the same, and what did they
ask

ask him for a fine, and how much did he give, and how many lives, and whom were the same; and that all the said confederates may discover how much of the money levied upon the judgment or extent aforesaid, obtained upon the said sir T. W. his bond, they or any of them had, or any other person to their privy, and which of them did cause the same to be put in suit or prosecution, and by whom, and who occasioned the releasing of the same, and that they may give a true and perfect account, and annex a schedule or particular of all and every part and parcel of sir J. and dame P. T.'s personal estate, that in their life-time or since, came to the possession of the said confederates, or any of them, or any other to their privy or knowledge, and was then or is now in specie; and that all the said confederates may a true and perfect answer make, to all and every the matters and charges set forth, and that your suppliant may be relieved therein according to equity and justice. May it please your lordship, the premises considered, to grant unto your suppliant, one or more of his majesty's writ or writs of subpoena, &c.



An Heir exhibits his Bill to call Trustees to Account for Receipts and Disbursements, relating to a Trust of certain Lands Leased by his Father, in Trust for a long Term, to raise younger Children's Portions, praying a Discovery of his Title, delivery of the Deeds, and possession of the Premises.



To the Right Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland,

HUMBLY complaining, sheweth unto your lordship, your suppliant W. H. of London, gent. that J. H. your suppliant's father, was in his life-time, seized in fee-tail, to him and the heirs of his body, of certain lands, tenements and hereditaments in S. B. and elsewhere, in the parish of H. in the county of W. of the yearly value of two hundred pounds and upwards, or the said J. was seized therein for life, the remainder to your suppliant and his heirs, or was seized therein, of some bounded or limited estate, whereby he was disabled from disposing of, or charging the same for any longer term than his own life, and that the said J. H. being seized as aforesaid, was on or about the twenty eighth day of January, in the year of our Lord, one thousand six hundred and eighty seven, by great importunities and very indirect means, prevailed with by J. W. D. B. and W. C. for to execute to them, a deed of demise of the premises, for a term of five hundred years, or some other long term of years yet to come, in trust, for raising five hundred pounds apiece for E. and H. two younger children of the said J. payable to them at their respective ages of twenty one years, tho' the same W. B. and C. at the same time very well knew that the said lands and premises, were by several deeds and conveyances so settled, as that your suppliant's said father had no power by law for to make any such said lease, but that the same must be determinable on the death of the said J.
and

and your suppliant further sheweth, that his said father, soon after the executing of the said lease, departed this life, leaving issue, R. his eldest son, your suppliant his second son, and the aforesaid E. H. and that your suppliant at the time of his said father's death, was an infant of very tender years, and that soon after his said father's decease, the said R. O. your suppliant's eldest brother, died, your suppliant then being heir at law, both to his said brother and father, and the sole and undoubted right to the premises was then vested in your suppliant; and your suppliant likewise further sheweth, that immediately after the making of the lease as aforesaid, the said W. and B. entered upon the premises, and received the rents and profits thereof, as well the arrears due before the making of the said lease, as the growing rents; the aforesaid C. dying soon after the making of the said lease, and that on or about the first day of February, in the year of our Lord, one thousand six hundred and eighty eight, the said D. B. assigned and transferred his interest in the said trust lease, to one R. F. a person indigent and ir-responsible, for the consideration of twenty pounds sterling, or thereabouts, paid to him the said B. by the said F. though the said B. did then know the said F. to be a person poor and insolvent; and your suppliant further sheweth, that presently after the said assignment and ever since, the said R. F. and J. W. have received the whole rents and profits of the premises, as well the arrears of rent due before that time, as the growing rents since, and that the said F. and W. under the colour of being trustees of the premises as aforesaid, did pretend and take upon themselves, to be guardians to your suppliant and the said E. and H. and under that pretence, did assume to themselves the education, disposal and government of your suppliant and his brother and sister, and on or about the tenth day of May, in the year of our Lord, one thousand six hundred and ninety, did give or bestow the said E. in marriage to J. W. son of the aforesaid J. W. one of the trustees, though the said J. W. the son, was a man of no substance or fortune in the world; and your suppliant further sheweth, that after the said intermarriage between the said E. H. and J. W. junior, the aforesaid J. W. the elder, and R. F. did contrive to raise five hundred pounds for the said J. W. junior, by charging the same on your suppliant's estate, and for that end and purpose, in or about Hilary term, one thousand six hundred and ninety one,

did procure a bill to be exhibited in this honorable court, in the name of the said J. W. junior, and the said E. his wife, and the said H. H. then an infant, against your suppliant then an infant, and the said J. W. the elder, and R. F. appeared both for themselves, and also for your suppliant, as his guardian, and answered accordingly, and by their consent and collusion upon bill and answer only (neither your suppliant nor any person on his behalf then attending or making any defence) a decree was obtained, that the said J. W. the elder, and R. F. should receive as well the arrears of rent, as the growing rents and profits of the premises, and should educate and provide for your suppliant and his brother H. as sir Lacon William Child should approve of, and apply the residue of the rents and profits towards the payment of five hundred pounds, due to the said E. at her day of marriage, with interest for the same, after the rate of six pounds per annum for each one hundred pounds, together with the costs of that suit, to be taxed by the said master, and that the same might be the more speedily raised, the said J. W. the elder, and R. F. as soon as conveniently they could, should raise money by demising, selling, letting or mortgaging the premises, or any part thereof, to such person or persons, for such part of the said term of five hundred years, as the said master should approve of, and should pay the same to the said J. W. the younger, and Elizabeth his wife, and when the said H. H. should come to twenty one years, the said J. W. the elder, and R. F. were to raise and pay to him, five hundred pounds out of the profits of the said estate, or by leasing or mortgaging the same, and to have all just allowances of money by them or either of them expended, or to be expended in relation to the said trust; and your suppliant further sheweth, that the said J. W. the elder, R. F. J. W. the younger, and E. his wife, or some of them, before the exhibiting the said bill, very well knew that your suppliant's father was barely tenant in tail, or for life, at the time of executing the aforesaid trust-lease, and had no power or right to make the said lease, or any otherways to charge the said premises after the determination of his own life, and they or some of them before the exhibiting of the said bill, had in their hands, custody, possession or power, all the deeds and writings relating to or concerning the said premises, particularly the deed or deeds, writing or writings, whereby it did plainly and evidently appear, that your suppliant's said father

father was barely tenant in tail, or for life, and they read, perused and advised upon the same, and were knowing of, or privy to the contents thereof, and they likewise very well knew, that the aforesaid trust-lease, made by your suppliant's said father as aforesaid, did not impower the said five hundred pounds for the portion of the said E. to be raised by mortgage, but only by perception of profits, and yet they evilly and designedly concealed all the aforesaid matters from this court; and your suppliant also sheweth, that the said J. W. the elder, and R. F. did procure a report, ex parte (and without any proof) from the said master, that they should be allowed forty pounds per annum, for the maintenance and education of his brother H. out of the rents and profits of the premises, and the sum of thirty seven pounds, three shillings and four pence for costs of the said suit, by which report, the said master did further certify, that the said R. F. had disbursed for your suppliant, for his maintenance and education, and in money expended in that and other suits, with monies paid by the said R. F. to the aforesaid D. B. upon the assignment of his trust, and for divers journeys into the country, from the twenty third of November, one thousand six hundred and eighty seven, several sums, in the whole amounting to two hundred and twenty seven pounds, seventeen shillings and four pence, and that he had also considered of a further account, brought in before him by the said R. F. for monies paid and disbursed by him for the maintenance of your suppliant and his said brother H. and for repairing of the premises, and taking several journeys into the country, and for several law charges and other allowances, and money lent to your suppliant and paid for him for cloaths and other necessities, from the twenty third of November, one thousand six hundred and eighty seven, to the twenty fourth of June then last past, the sum of three hundred and seventy pounds, nineteen shillings and nine pence, in all five hundred and thirty five pounds, seventeen shillings and one penny, and that the said R. F. had received out of the rents and profits of the premises in the same time, the sum of three hundred and eighty eight pounds, which being deducted out of the five hundred and thirty five pounds, seventeen shillings and one penny, there remained due to the said R. F. the sum of one hundred and sixty seven pounds, seventeen shillings and one penny; and your suppliant further sheweth, that the said R. F. did not expend

expend for the maintenance or education of your suppliant, the sum of ten pounds per annum, but left him destitute of almost all the conveniencies or necessaries, and procured the said H. H. your suppliant's younger brother, for to be boarded in the county of W. for seven pounds per annum, and that your suppliant being an infant, and no manner of ways knowing of or being conversant in affairs of law, and not distrusting any evil or mischief was designed against him, did not attend, nor did any person in his behalf attend the said master, in his taking of the said account, or about or concerning his making of the said report; and the said R. F. and J. W. senior, during the infancy of your suppliant, surreptitiously procured the said report to be confirmed, without any manner of notice given to your suppliant, or to any person on his behalf, when, as the said R. F. had received out of the rents and profits of the premises, very great sums over and above what ever was disbursed by him, or ought in justice or equity to be allowed to him, and the said decree, report and proceedings in the said court, were all had and carried on by collusion, and the said F. and W. the elder, though defendants in the cause, yet they paid the whole charges of prosecuting the said cause; and your suppliant further sheweth, that the said R. F. and J. W. the elder, after the said decree made in this court as aforesaid, did endeavour to raise five hundred pounds, for the portion of the aforesaid E. your suppliant's sister, by mortgage of the premises, and for that end and purpose, did apply themselves to several persons, and leave with them the deeds and writings concerning and relating to the premises, and the said persons did refuse to lend or advance any monies thereupon, by reason that it did appear by the said deeds and writings, that your suppliant's father was barely tenant in tail, or for life, at the time of his making the aforesaid lease to the aforesaid trustees; and your suppliant also sheweth, that the said J. W. senior, R. F. D. B. and J. W. junior, being informed and understanding, that the said deed or deeds, writing or writings, which sheweth your suppliant's said father to be only tenant in tail, or for life as aforesaid, had obstructed, and would hinder and prevent the raising of five hundred pounds for the portion of the said E. they or some of them, cancelled or caused to be cancelled, or have secreted and concealed the said deeds and writings, and by such indirect and sinister means, have advanced or borrowed five hundred pounds and upwards of one J. G. and

and have charged the premises therewith, and have paid the same, or greatest part thereof, to J. W. the younger, or his use, without taking care for any provision to be made thereout for the said E. your suppliant's sister, BUT NOW SO IT IS, may it please your lordship, that your suppliant being lately attained to his full age of twenty one years, hath often in a friendly manner requested the said J. W. senior, and R. F. D. B. and J. W. junior, for to deliver to your suppliant, all the writings, deeds and evidences belonging to the premises, the sole right to the premises, and the writings thereunto appertaining being vested in your suppliant, and also for to come to a just and fair account with your suppliant, for the rents and profits of the premises, received by them as aforesaid, but they combining and confederating with the said J. G. the mortgagee, who well knew and had notice before he lent his money, that your suppliant's said father was only tenant in tail, or for life, and with the persons hereafter named, and others whose names are at present unknown to your suppliant, but when discovered, your suppliant prays the same may be inserted; and they made parties herunto, with apt words to charge them, for to impoverish and ruin your suppliant, they also flatly deny and refuse to deliver to your suppliant, the said deeds, evidences and writings, or to account with him for the profits of the premises so received by them, insisting upon the aforesaid decree and report, and that the account is fixed and settled thereby, and your suppliant concluded, though he was an infant pending the whole suit, and never intermeddled in the said account, or any matter relating to the said suit, but the whole proceedings were managed and transacted by the said confederates, purposely and designedly for to abuse and injure your suppliant; forasmuch therefore, as matters of this nature do come properly before your lordship for redress in this honorable court, and for that your suppliant's witnesses who could prove the aforesaid matter, are either dead, or in places remote beyond the seas, so that your suppliant cannot have the benefit of their testimonies; TO THE END THEREFORE, the said J. W. senior, R. F. D. B. and J. W. junior, and other the confederates, upon their respective corporal oaths, may in their several answers set forth, whether they do not know, believe, or have heard, that the said J. H. your suppliant's father, was tenant in tail, or for life only, of the premises, at or before, or how long before the time
of

of the executing the aforesaid lease to the said trustees, and when, and how he came to be otherwise, and whether several persons, and who by name, did not refuse to lend any money upon the premises, by reason that it did so appear to them, or they had reason to believe so, by or from the deeds or writings then produced or shewn to them, or for some other, and what reason, and what is become of the said deeds and writings so shewn to them as aforesaid, and may likewise answer, what money they or either of them have raised or borrowed upon the security of the premises, and of whom, and how the same had been applied or disposed, and what security is given for the same, and may set forth the substance and contents of the aforesaid lease, made by your suppliant's father, and may declare what deeds or writings, they or either of them, or any other person or persons to their knowledge or belief, and who by name have, or ever had in their possession, custody or power, and when they had the same, and what is become thereof, and may set forth the whole substance and dates thereof, and the witnesses names thereto, and that the said D. B. and R. F. may particularly set forth the consideration of the said assignment made by B. to F. why and wherefore the same was made, and how much money was received or paid by or to either of them, and from whom, for that cause, or upon that account, and whether the said J. T. was not then indigent and insolvent, and known by the said B. to be so, and that all the confederates may particularly answer the premises, and your suppliant have the possession of the premises, and all the deeds and writings relating thereto delivered to him, and that the confederates come to an account for the profits of the premises, and your suppliant be relieved according to equity, &c.
Pray process of subpoena.



An Infant by his Prochien Army, exhibits a Bill against his Father's Trustees to account and discover his title to his Lands, to have security for the true performance of their Trust, as the Court shall direct, or to have the Trust transferred.



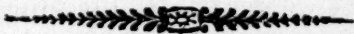
To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord High Chancellor of Ireland.

HUMBLY, &c. sheweth, &c. your suppliant W. H. an infant under the age of twenty one years, that is to say, of the age of nineteen years and upwards, by T. C. of, &c. his next friend and guardian, that whereas J. H. your suppliant's father, deceased, was in his life-time, seized in his demesne as of fee, of and in divers lands, tenements, hereditaments, situate, &c. of the value of five hundred pounds per annum, and being so seized, leased the same, or a great part thereof, unto J. W. the elder, D. B. and one W. C. deceased, for a long term of years, in trust, for raising two hundred pounds apiece, for E. and H. his younger children, payable unto them at their respective ages of twenty one years, or marriage, and interest for their maintenance until their portions should become payable, that soon after, the said J. departed this life, and left R. your suppliant's eldest brother, his son and heir, who also departed this life about four years since, leaving your suppliant his next brother and heir, as well to him as the said J. his father, but after the death of the said J. during the life of the said R. and some time since his death, the said D. B. did act in the said trust, and afterwards assigned his interest in the said lands and premises, unto one R. F. in trust as aforesaid; but your suppliant further sheweth to your lordship, that the said J. H. in his life-time, and before the making of the said lease, did, upon good considerations, seal, and as his act and deed delivered a certain deed, either poll or indented, whereby he

he settled all the said lands, tenements or hereditaments, upon some person or persons therein named, to the use of your suppliant and his heirs in general, or special tail, or to some other use or uses, whereby your suppliant is entitled thereunto, had your suppliant the same to produce, the same being in the hands or custody of the said R. F. or in the hands or custody of some other person or persons, by his delivery, knowledge or privity; AND NOW SO IT IS, may it please your lordship, that the said R. F. and J. W. under colour of the trust, by the said indenture of lease and assignment thereof created, or by some other ways or means, either as trustees, or pretended guardians to your suppliant, in the month of February, which was in the year of our Lord, one thousand seven hundred and eighty six, entered upon all the said lands, tenements and hereditaments, and then procured an order out of this honorable court, to stop all the rents of the said premises, which should be due at Lady-day then next following, in the tenants hands, which rents, and all accrewing rents thereof, they the said R. F. and J. W. or one of them, have had, taken and received, being for three years and an half, compleat at Lady-day next, which was in the year of our Lord, one thousand seven hundred and eighty six, being several sums for divers of the tenements, which they the said F. and W. have since received and converted to their, or one of their own uses; and the said F. upon pretence of some report made by one of the masters of this hon. court, claims to have allowed him, forty pounds per annum, for the maintenance of your suppliant, though your suppliant is an apprentice, and hath not received of him, nor hath he expended on your suppliant, in cloaths or otherwise, since he entered on the said trust, more than fifty or sixty pounds in the whole, and boarded your suppliant's brother in Portarlington, at the rate of seven pounds per annum, and after your suppliant desired from the said F. a fair account of what he had received out of the said lands and premises, and what he had disbursed, he has since refused to allow your suppliant cloaths and necessaries, and pretends your suppliant is still in his debt, but at the same time, refuseth to give your suppliant any copy of his accounts, but put your suppliant to a great charge in procuring the same from a master in chancery, before whom only he pretends he is to account, which when your suppliant had obtained, the same appeared very unjust and unreasonable, many sums of money being charged therein paid,

paid, which were not, besides he pretends, he hath taken journeys three or four times in a year, from his house in Dublin, to the lands in Portarlinton, on purpose to receive the rents, and keeps horses at your suppliant's charges for the same purpose, so that his expences, riding charges and pains, amounts to half the rents, if not more, although the defendant W. who is the other trustee, hath his residence within fourteen miles of the place where the lands are, and moreover, the said D. B. before he assigned his trust, had procured five hundred pounds at interest, of one Mr. B. ready to be paid your suppliant's said sister E. for her portion, which became due to her, she being then married to the said J. W. one of the trustees sons, which F. and J. W. refused to take of the said B. though she offered the same unto them, and put your suppliant to above one hundred pounds charge extraordinary, to procure the said five hundred pounds of another person, as will appear on the said F. his accounts, she the said Mrs. B. being willing to accept of security upon trust lands, without any decree of this court, which was very unnecessary, afterwards by the said W. and F. procured, by which means your suppliant and his estate are likely to be further in debt; to your suppliant's manifest ruin, he the said F. for the most part receiving the whole rents, and being very poor and insolvent, spends and converts them to his own use, and confederates with the said J. W. and other persons unknown to your suppliant, who, when discovered, your suppliant prays may be made parties to this bill, with apt words to charge them, conceal the said deeds of settlement so made by your suppliant's father, which entitled your suppliant to the fee of the premises as aforesaid, and refuse to deliver the same to your suppliant, or to his use; **ALL WHICH ACTINGS AND DOINGS** of the said F. and W. but especially of F. are contrary to all equity and good conscience, *in tender consideration whereof*, and forasmuch as your suppliant cannot discover the truth of the premises, but by the oath of the said confederates, neither can set forth the contents of the deeds of settlement, or discover where the same are, nor make such proof of what monies they or either of them have received out of your suppliant's estate, your suppliant's witnesses who should prove, &c. **TO THE END THEREFORE**, that the said F. and W. may upon their oaths, &c. and may deliver up to your suppliant, as well the said deeds of settlement, as all other writings

which concern your suppliant's estate, and come to a fair and just account for all their receipts and disbursements concerning the premises, and make proof thereof, and that your suppliant's estate may not hereafter be spent and wasted in journeys, nor come into the hands of insolvent persons, and that the said W. and F. but especially F. shall give such security as this honorable court shall direct, for their just performance of their trusts, or immediately assign over their interest to two such as your suppliant shall nominate, and that in the mean time, the accrewing rents may remain in the tenants hands, or otherwise be paid as your lordship shall think meet, &c. *Pray process of sub-pœna.*



A Bill brought by Creditors for a Discovery.

To the Right Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, shew unto your lordship,
your suppliants, T. P. of &c. joiner, W. R. and
T. R. of the same parish, bricklayers and co-partners, E.
R. of the same parish, widow, plaisterer, R. T. of the
same parish, mason, J. F. of the same parish, smith, P. H.
of the same parish, plumber, and J. G. of &c. painter,
creditors of J. B. late of &c. gentleman, deceased; that
J. D. late of &c. esquire, deceased, being possessed of,
interested in or entitled unto several messuages or tenements,
situate & being in or near New-street, within the city of Dub-
lin, or in some other place within the said city, by virtue of
three several leases for a term of forty years each, two
from the dean and chapter, and the other from the dean
and chapter of St. Patrick, in all which terms several years
were then to come; did on or about the day
of depart this life intestate, leaving Ann,
then the wife of the said J. B. his only child; and the said
Ann, soon after the death of her said father, to wit, on or
about the day of one thousand,
seven hundred, and seventy three, obtained letters of
administration of all and singular the goods, chattels,
rights and credits of her said father J. D. and by virtue
thereof, she the said Ann, together with the said J. B. her
late husband, became entitled unto, and they accordingly
did enter upon and possess themselves of the said leasehold
premises, among other the personal estate of the said J. D.
to the amount of several thousand pounds, and much more
than sufficient to pay all the just debts of the said intestate;
and your suppliants further shew unto your lordship,
that the said J. B. and Ann his wife, afterwards employed
your suppliants respectively to do several works and repairs
in

in and upon the said several leasehold messuages and tenements, and to find and provide materials for the same, which amounted to a very considerable sum of money, they the said J. B. and Ann his wife then proposing to give your suppliant T. P. a letter of attorney to receive the rents and profits of the premises, and thereout to pay himself and the other creditors for the said work, or to that effect ; in confidence whereof your suppliants went on in their respective stations in the said work, and finished the same, but before any such letter of attorney was executed, or any satisfaction made to your suppliants or any of them, for such work and materials ; the said J. B. in or about the month of March, one thousand, seven hundred, and seventy three, departed this life intestate, and soon after his death the said Ann obtained letters of administration out of the prerogative court of this kingdom, of all and singular the goods, chattels, rights and credits of him the said J. B. her late husband, and afterwards entered upon all the said leasehold premises, and possessed herself of all other the personal estate of the said J. B. consisting of ready money, plate, jewels, linen, household stuff, bonds, notes, and other securities and debts, by simple contract, amounting in the whole to a very considerable value, and more than sufficient to pay all his just debts ; whereupon your suppliants applied to the said Ann for payment of their respective debts, but she the said Ann pretending that she had not at that time sufficient to pay the same, did propose to make your suppliants easy, by making a security by way of mortgage, or otherwise, of the said leasehold premises, to or in trust for them as they should think proper, and to pay interest for them after the rate of five pounds by the hundred, for their respective demands, until money should come in to satisfy the whole ; to which your suppliants having agreed a draught of a mortgage or security was drawn up, and prepared accordingly by the attorney, solicitor or agent of the said Ann B. or by some other person by her order, or direction, or with her privity ; which having been perused by the person employed by your suppliants for that purpose, was returned back in order to be engrossed and perfected ; but the said Ann soon afterwards intermarrying with G. G. of &c. gentleman, the said proposed deed for securing the payment of your suppliants debts to them, was never executed ; he the said G. G. refusing to join therein, or to give his assent thereto ; and he the said G. G. having in right of his said wife, entered upon the said leasehold premises, and

and possessed himself of all the personal estate of the said J. B. but refusing or neglecting to pay your suppliants their respective just demands, your suppliants in or about Michaelmas term last, brought their respective actions in his majesty's court of common pleas, against the said G. G. and Ann his wife ; to which they the said G. G. and Ann his wife pleaded that J. B. was in his life time bound unto one T. D. by bond dated the thirteenth day of December, one thousand, seven hundred, and thirty two, in the sum of one hundred and ten pounds ; and also bound unto one R. S. by bond dated the fourteenth day of December, one thousand, seven hundred, and thirty two, in the sum of two hundred pounds ; and that such debts were just and true ; and that she the said Ann had fully administered all the goods and chattels of the said intestate J. B. except to the value of ten shillings ; whereupon your suppliants signed interlocutory judgments in the said respective actions for the assets of the said J. B. when they should so happen ; and have since executed writs of enquiry of damages, and obtained final judgments thereupon, for the several and respective sums of money herein after mentioned ; that is to say, your suppliant T. P. for the sum of one hundred and eighteen pounds ; your suppliants W. R. and T. R. for the sum of seventy one pounds, ten shillings, and nine pence ; your suppliant J. G. for the sum of twenty seven pounds ; your suppliant J. F. for the sum of twenty pounds, nine shillings ; your suppliant R. T. for the sum of twenty three pounds, nineteen shillings ; your suppliant P. H. for the sum of thirty pounds, nine shillings, and one penny ; and your suppliant E. R. for the sum of sixteen pounds, nineteen shillings, and seven pence ; over and besides the costs expended by your suppliants respectively, in obtaining their said several and respective judgments, as by the records of the said respective judgments, to which your suppliants refer, may appear ; and your suppliants have since, in a fair and friendly manner, applied to the said G. G. and Ann his wife, to come to a full and true discovery of all the goods, chattels, credits, and other the personal estate of the said intestate J. D. and how the same and every part thereof has been applied and disposed of by them or other of them, or by the said J. B. in his life time , and likewise to have a discovery of all the goods, chattels, credits, and other the personal estate of the said J. B. deceased, and how the same and every part thereof has been applied and disposed of by them or either of them, or otherwise that they

they should pay your suppliants their several demands aforefaid; and your suppliants well hoped that the faid defendants would readily have complied with fuch their reasonable requests, as in all right and justice they ought to have done; BUT NOW SO IT IS, may it please your lordship, that the faid G. G. combining and confederating to and with I. S. of, &c. esq; and I. P. of, &c. mercer, and to and with divers other persons to your suppliants unknown, whose names when discovered, your suppliants pray may be inserted in this their bill of complaint, with apt words to charge them, how to defeat your sudpliants of their just demands; they the faid confederates, give out and pretend that the faid J. D. the intestate, was at the time of his death, greatly indebted to divers persons, in several large sums of money, and that he died possessed of little or no personal estate, except the leasehold premises herein before mentioned, and that therefore, the faid leasehold premises are in the first place, liable to the payments of the debts of the faid intestate J. D. and that the faid leasehold premises when sold, will hardly be sufficient for the payment thereof; at other times, they admit that there will be sufficient assets of the faid J. D. to discharge all his debts, exclusive of the faid leasehold premises, or at least there will be a very great overplus arising out of the faid leasehold premises, after the faid debts are totally discharged, but then they pretend the faid J. B. did not dispose or alter the leases of the faid leasehold premises in his life-time, and that therefore the same did never become his property, nor are liable to the payment of his debts; but that the faid Ann G. is now possessed thereof, as administratrix of the faid J. D. her late father, deceased, and not as administratrix of the faid J. B. her late husband, or if the same were liable to the debts of the faid J. B. then they pretend that the faid J. B. was at the time of his death, indebted to several persons upon judgments, recognizances, and other specialties, which have exhausted the value of the faid leasehold premises, and all other the personal estate of the faid J. B. and that they have little or no assets left to satisfy the above mentioned bonds, which they pretend to have been given for fair and just debts, and which they have pleaded in bar, to the several actions brought by your suppliants, for the recovery of their just debts as aforefaid, whereas your suppliants expressly charge, that the faid J. B. did in his life time, surrender up, or cause to be surrendered up to the dean and chapter of St. Patrick's,

trick's, the said lease and leasehold premises, held by them, and which the said J. D. was at the time of his death possessed of, or entitled unto, and did likewise surrender, or cause to be surrendered to the said dean and chapter the said lease and leasehold premises, held of them, and which the said J. D. was at the time of his death, possessed of and entitled unto, and procured new leases of each of the said leasehold premises, to be granted unto him the said J. B. or to some other person or persons for his use and benefit, by the said dean and chapter, for the terms of forty years each, as by the said several leases, in the custody or power of the defendants, or some of them, when the same shall be produced, relation being thereunto had, will more fully and at large appear; and your suppliants further charge, that the said G. G. and Ann his wife, well know that the above mentioned bonds, which they have pleaded in bar, to the said several actions brought against them by your suppliants as aforesaid, (if any such there be) were not entered into for money lent, or any other valuable consideration, but were given and set on foot by fraud and collusion, with an intent to defraud your suppliants of the several sums due to them as aforesaid, for the use and benefit of, and in trust for her the said A. G. or the said bonds were entered into by the said J. B. for the performance and observation of some covenants, which were all duly kept and performed by the said J. B. to the time of his death, so that neither of the said bonds ever became forfeited; or if the said bonds were entered into for good and valuable considerations, and for the payment of money to the respective persons to whom they were severally given, yet they, and most other of the said J. B.'s just debts, or the greatest part thereof, were paid and satisfied in the life-time of the said J. B. or have been compounded for by the said G. G. and Ann his wife, or one of them, since his death; and there are some releases or receipts given, or some indorsements or memorandums made, either upon the said pretended bonds, or in some books, papers, or writings, in the hands, custody, or power, of the said defendants, G. G. and Ann his wife, or one of them, which nevertheless they refuse to discover, or to give your suppliants any satisfaction therein, but insist on the same as still totally due and unsatisfied, and the said defendants G. G. and Ann G. do likewise pretend that the said leasehold premises, or some part thereof, stand mortgaged to the

the defendant J. S. for the sum of one thousand five hundred pounds, but neither the said G. G. nor Ann his wife, nor the said J. S. will discover when such mortgage was made, nor by whom, nor of what part of the said leasehold premises, nor how much of the said mortgage money has been since paid off and satisfied, nor who is in the receipt of the rents and profits of the said leasehold premises; and at other times the said confederates pretend that the said J. S. by and with the consent of the said G. G. and Ann his wife, hath assigned over his interest in the said mortgaged premises, to the said J. P. for the residue of the term to come therein, and the said defendants G. G. and Ann his wife, further pretend, that in case the said mortgage was discharged and satisfied, yet that your suppliants would not be entitled to have any satisfaction out of the said leasehold premises, for that the same were by some deed or deeds, executed by the said J. B. in his lifetime, duly settled upon her, and such children as he should have by her, and that by virtue thereof, she is entitled to the said leasehold premises, for the several terms of years to come therein, if she shall live so long; whereas your suppliants expressly charge, that if any such deed or settlement there be, the same was executed by the said J. B. if at all subsequent to his marriage with the said defendant Ann, and without any consideration, or any articles of agreement entered into by him, previous to his marriage with her, for that purpose, and therefore as your suppliants are advised, such deed or deeds of settlement, if any such there be, are entirely voluntary, and as against fair and just creditors of the said J. B. utterly null and void; and your suppliants expressly charge, that if any such there are, the same were so made after your suppliants had repaired and improved the said premises, and that such repairs greatly advanced the value thereof, the same being ready to tumble down, and not in a proper condition for sale or to be let before such repairs were done; and your suppliants further charge, that the said defendant Ann G. was so sensible that the said deed of settlement, if any such there be, was of no validity, that she had no other right and title to said mortgaged premises, but as administratrix of her said late husband J. B. that subsequent to her said late husband's death, and before her intermarriage with her now husband, the defendant G. G. she the said Ann B. now Ann G. took up and borrowed the sum of one hundred and fifty pounds and upwards, from the said defendant

defendant Mr. J. S. and as administratrix of her said late husband J. B. and the original mortgagees to whom the said premises then stood mortgaged, executed a fresh mortgage to him of the said leasehold premises, for the sum then borrowed of him, together with the sums that had been paid by him to them, in discharge of the former mortgages, which she could not have power to do if such pretended settlement was valid, and the legal estate of the said leasehold premises was not vested in her; and the said defendants G. and Ann G. though they will receive upwards of seven hundred pounds in the sale of the said estate, by the improvements made therein, by the work and labour done and performed by your suppliants thereto as aforesaid, yet they refuse to pay your suppliants their said just demands, by which they are to reap so great a benefit, and for that purpose, they have made use of divers methods and contrivances to conceal and waste the said intestate J. B.'s estate, and have neglected, and do refuse to give or exhibit a true and perfect inventory or account of the said J. B.'s personal estate, particularly of the ready money, or bank bills for money, *South Sea*, and *East India* bonds, and other securities or notes for money, which were in the said intestate's custody at the time of his death; and of the several sums of money that were at the testator's death due for rent from the several tenants of the freehold and leasehold estates the said intestate died seized or possessed of, although they had been frequently requested so to do; or if the said defendants George and Ann G. or either of them, have exhibited any inventory or account of the said J. B.'s personal estate, the same is false, erroneous and imperfect, and there are many omissions and undervaluations of the goods and things therein contained, whereby the estate and effects of the said J. B. are much lessened and sunk, no care having been taken to value and appraise the same after his death, or if there was any appraisement thereof, the same was not made fairly, and by indifferent persons, and sworn appraisers, nor was such appraisement according to the full and true values of the several particulars whereof the same consisted; and the said defendants George and Ann G. have delivered up divers securities for money, which were due and owing to the said J. B.'s estate, and having taken new securities for the same in their own names, or in the name of one of them, or in the name of some other person, in trust for them or one of them, and by other ways and means they

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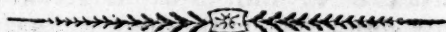
have altered and varied the nature and kind of the said estate, the better to conceal the same from your suppliants; **ALL WHICH PRETENCES, ACTINGS AND DOINGS** of the said several defendants and their confederates, are contrary to right equity and good conscience, and tend to defeat your suppliants of the several sums due to them in manner aforesaid; *in tender consideration whereof,* and forasmuch as your suppliants are remediless in the premises, in and by the strict rules of the common law, in regard your suppliants cannot come at a full discovery of all or any of the matters and things herein before charged, but upon the oath of the said several defendants, nor can be admitted to redeem the said mortgaged premises, in order to come at a satisfaction for their several and respective debts, but by the aid and assistance of a court of equity, more especially of this honorable court; **TO THE END THEREFORE,** that the said G. G. and Ann his wife, and J. S. and J. P. and the rest of the confederates when discovered, may true and perfect answer make to all and singular the premises, as fully and effectually as if the same were herein again repeated and interrogated; and more especially, that the said Ann G. may set forth the time when the said J. D. departed this life, and whether she is not administratrix of the said J. D. her late father deceased, and when such administration was granted, and whether by virtue thereof, or how otherwise, she the said Ann, together with the said J. B. her late husband, did not at any time, and when, enter upon, or possess themselves of the said leasehold premises, or any, and what part thereof, and if there are any, and what debts of the said J. D. the intestate, remaining unsatisfied, except what is or are secured by the said mortgage of the said leasehold premises, and whether they the said J. B. and Ann his then wife, did not employ your suppliants, or any, and which of them, to do any, and what works or repairs in or upon the premises, or any, and what part or parts thereof, and whether such letter of attorney as aforesaid, or any other, and what expedient was proposed, and by whom, for satisfying your suppliants for their said work and materials, and whether the said J. B. did not die intestate, and when, and whether administration was not thereupon granted to her the said Ann, and whether she the said A. did not afterwards enter upon and possess herself of the said leasehold premises, and of other personal estate of the said J. B. and to what amount, and whether she the said Ann did not propose and

and agree to make any, and what security to your suppliants, or any, and which of them, for payment of their respective debts, and whether any, and what draught or draughts was, or were at any time, and when, and by whom, and by whose order, direction or privity, prepared for that purpose, and why, and for what reason the same was not ingrossed and perfected; and whether, as she knows or hath heard, and believes, the premises were in a condition for sale, or to be let, before such repairs were made by your suppliants as aforesaid; and whether such repairs did not greatly advance the value thereof, or any, and what part thereof, in any, and what particular, to be let or sold, and to what amount in the whole; and whether the same, or any, and what part thereof did not stand empty, or lie untenanted for any, and what time, before such repairs were made, and what profit the same did produce before the same were so repaired, and how the same are now set, let, or otherwise, and how disposed of by the year or otherwise, and to whom, and for what, and whether the same, or any, or what part thereof are sold to, or any, and what contract made for the sale thereof, or of any, and what part thereof, with any person or persons, and whom, and when, and for what, and that the said G. G. may set forth whether he did not upon his intermarriage with the said Ann his wife, enter upon and possess himself of the said leasehold premises, or any, and what part thereof; and that they the said confederates, G. G. and Ann his wife may set forth whether, as they know, believe or have heard, the said J. B. did not in his life-time, cause or procure the said old leases of the leasehold premises above mentioned, to be surrendered and delivered up, and by whom, and to whom, and whether some new lease or leases bearing date respectively the seventh day of December, one thousand seven hundred and thirty one, or any other, and what leases were not granted by the said dean and chapter of saint Patrick's to the said J. B. or some other person, and whom by name, by his direction and appointment, and for his use and benefit, or upon any, and what other trust, and whether they the said J. B. and Ann his wife, did not at any time, and when, agree with the dean and chapter of saint Patrick for taking a new lease of the leasehold premises held of them; and whether they the said J. B. and Ann his wife, or either, and which of them, did not join in the surrendering and delivering up of the said lease, and whether some new lease or leases
of

of the said leasehold premises held of them, was or were not made or granted by the said dean and chapter of saint Patrick to the said J. B. or some other person, and whom by name, by his direction and appointment, and for his use and benefit, or upon any other, and what trusts; and that the said G. G. and Ann his wife, and the said J. S. and J. P. may set forth whether such mortgage as aforesaid, or any other, and what mortgage was made to him the said J. S. and by whom, and when the same was so made, and whether any, and what sum of money was advanced and lent to the said Ann G. at the time of the making such new mortgage, and whether the same hath been assigned to the said J. P. and by whom, and when, and for what sum of money; and whether the said Ann does not take upon herself to be entitled to the leasehold premises in the said mortgage deed contained, as administratrix of her said late husband J. B. and as such to make the same a security to him the said J. S. for the money then advanced, and lent by him to her, and that they may set forth what remains due to the said J. S. and J. P. or either, and which of them, for principal and interest on said mortgage; and if the said defendants G. and Ann G. shall pretend to be entitled to the said leasehold premises, by virtue of any settlement, conveyance or assignment thereof from her said late husband J. B. then that they may declare and set forth whether such deed or deeds of settlement, conveyance or assignment, were not executed by the said J. B. after his marriage with her the said defendant Ann, and how long after, and if in pursuance of any, and what articles of agreement previous to her said marriage, and if not, why they insist upon the same in prejudice of your suppliants and the rest of the just creditors of the said J. B. and that they may set forth the date and material contents of such settlement, and that they the said G. G. and Ann his wife, may either admit assets of the said J. B. sufficient to satisfy your suppliants demands, or else that they may set forth a full and true account of all the plate, ready money, household goods, bonds, stock in the several trading companies, and other the effects of the said J. B. come to their or either of their hands, custody, or power, or to the hands, custody, or power of any other person or persons for their or either of their use or benefit, and how the same hath been paid, applied and disposed of, and when, and by or to whom, and for what, and whether the same, or any, and what thereof remains undisposed of, and in
whose

whose custody or power, and to what value; and that they may set forth, upon what account the bonds above mentioned, which they have pleaded in bar to the several actions brought by your suppliants as aforesaid were given, and whether any, and what sum of money remains due thereon; and that the said G. G. and Ann his wife, may likewise account for the said sum of one hundred and fifty pounds, seventeen shillings and eleven pence, received by the said Ann G. from the said J. S. as aforesaid; and in case the same, together with the other goods and effects of the said J. B. deceased, shall not be sufficient to answer your suppliants demands, with their costs and charges in respect thereof; that then your suppliants may be at liberty to redeem the said mortgaged premises, and that upon payment of what shall be due to the said J. S. or the said J. P. for principal, interest, and costs, by your suppliants, the said leasehold premises may be forthwith sold for the best price that can be gotten for the same, and that out of the money arising by such sale, your suppliants may be allowed to reimburse themselves the money which they shall so pay to the said J. S. and the said J. P. for his or their debt and costs, and likewise to have satisfaction thereout for their said several debts and demands, together with all their costs and charges in relation thereto; and that such pretended deed or deeds of settlement, if any such there be, may be set aside, and declared null and void; and that the said J. S. and J. P. may, upon the terms aforesaid, and the said G. G. and Ann his wife, may join in such sale of the said leasehold premises, for the purposes aforesaid, as this honorable court shall direct; and that your suppliants may have such further and other relief in all and singular the premises, as shall be agreeable to equity. May it please your lordship to grant unto your suppliants, his Majesty's most gracious writ or writs of subpœna, to be directed to the said G. G. and Ann his wife, and J. S. and J. P. and other their confederates when discovered, thereby commanding them, and every of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in this honorable court, then and there to answer all and singular the premises; and further to stand to, and abide such further orders, directions and decree as to your lordship shall seem meet; and your suppliants shall ever pray, &c.

Bill brought by a Creditor on behalf of himself and others Creditors, for Sale of a Testator's real Estate, in case his personal Estate shall not be sufficient to pay his Debt; and to perpetuate the testimony of Witnesses to the Testator's Will.



To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship, your suppliant A. B. of, &c. as well on the behalf of himself as other the creditors of C. D. late of, &c. deceased, who shall come in and contribute to the expence of this suit, that the said C. D. being in his life-time, and at the time of his death, seized in fee of a considerable real estate, of which he had power to dispose, and also possessed of a considerable personal estate; and being so seized and possessed, he the said C. D. did duly make and publish his last will and testament in writing, bearing date on or about the tenth day of May, which was in the year of our Lord one thousand seven hundred and sixty eight, in the presence of three credible witnesses, who also subscribed their names as witnesses thereto, in the said testator's presence; and the said testator did therein and thereby give and devise to his sister M. D. and to his brother H. D. and their heirs, all and every his messuages, lands, tenements, and hereditaments whatsoever; IN TRUST to sell and dispose of the same, and by the monies arising by such sale, to pay all his just debts; and the overplus (if any) and also all his goods, chattels, rights, credits, and personal estate, he gave to the said H. D. and M. D. equally to be divided between them, and made them joint executors of his said will. And your suppliant further sheweth, that the said testator, soon after making of his said will, departed this life (*to wit*) on or about the fifth day of August, which was in the year of our Lord one thousand seven hundred

hundred and seventy, without altering or revoking the same, and the said executors, or one of them, duly proved the same, and undertook the burthen of the execution thereof, as by the said will and probate, relation being thereunto had, may more fully and at large appear; and your suppliant further sheweth unto your lordship, that the said C. D. was indebted to your suppliant in the sum of one hundred pounds, by a note of his hand, bearing date on or about the sixth day of June, one thousand seven hundred and sixty, whereby the said testator promised to pay your suppliant or his order, the said sum of one hundred pounds, with lawful interest for the same, upon demand, for value received, as by the said promissory note under the hand of the said C. D. now in your suppliant's custody ready to be produced, and to which your suppliant craves leave to refer, may appear; and the said testator was also indebted to several other persons in divers considerable sums of money; and your suppliant sheweth unto your lordship, that upon the death of the said C. D. the said M. D. and H. D. by virtue of, or under colour of the said will, entered into the receipts of the rents and profits of all the said real estate of the said C. D. and also possessed themselves of all the goods, chattels, rights, credits and personal estate of the said testator, to a very considerable value, and much more than will be sufficient to pay and discharge all the just debts of the said testator; and your suppliant hath several times applied himself to the said M. D. and H. D. for a satisfaction of his said demand; but the said M. D. and H. D. combining and confederating to and with P. G. and Ann his wife, (which said Ann is only daughter and heir at law of the said testator) and to and with divers other persons at present unknown to your suppliant, whose names when discovered, your suppliant prays may be inserted herein, and they made parties hereto, with apt words to charge them, how to wrong and injure your suppliant; they sometimes give out and pretend, that they have several claims upon the said estates, by means whereof your suppliant is delayed and prevented from receiving his debt, or any part thereof; and at other times the said executors admit the testator's personal estate will be sufficient to pay all his just debts, but insist that they have not been able to collect or get in the same, and therefore cannot give your suppliant any account thereof, or make him any satisfaction for his said debt; and the said executors pretend that the said testator's personal

personal estate is very small and inconsiderable, and is not near sufficient to pay his just debts; and the said P. G. and Ann his wife, do insist that the said testator's personal estate is more than sufficient to pay all his just debts, and therefore they insist that the said real estate ought not to be sold, and refuse to join in the sale of the said estate, pretending that the said will was not duly executed, and that therefore the same descended to the said A. D. as heir at law to the said testator. **ALL WHICH ACTINGS AND DOINGS** of the said confederates are contrary to equity and good conscience, and tend to the great wrong and injury of your suppliant, who is only properly relievable in this honorable court. **TO THE END THEREFORE,** that the said M. D. H. D. P. G. and A. his wife, may true and perfect answer make, to all and singular the matters and things as fully and particularly as if the same were herein again repeated, and they severally interrogated thereto, and particularly that they may set forth whether the said C. D. was not in his life-time, and at the time of his death, seized in fee or otherwise, of and in some good estate of inheritance, of a considerable value, or what real estate, and whereof he had a full power to dispose, and whether he the said testator did not make and duly execute such will, and of such date as herein before set forth, or any other, and what will, and whether he was not of sound and disposing mind, memory and understanding, at the time of making and publishing his said last will, and whether the witnesses to the said will, did not duly attest and subscribe their names as witnesses thereto, in the presence of the said testator, and when he died; and that the said confederates may set forth, whether the said testator was not, in his life-time, and at the time of his death, indebted to your suppliant in the manner herein before set forth, or in any other, and what manner, as they know, have heard, or believe; and that the said executors may set forth, whether they, or either, and which of them, have or hath, since the death of the said testator, proved the said will, and got into possession of all, or any of the personal estate of the said testator, and also entered upon the receipt of the rents and profits of the real estate, and may either admit assets sufficient to pay the demands of your suppliant, or otherwise may set forth a true and particular account of the said testator's personal estate, and what the same did or doth consist of, with the true and real value thereof, and of every part thereof, and what

part thereof hath come to the hands, custody, or power of them the said confederates, or to the hands, custody, or power of any other person or persons, and whom, by them, or by or with their, or either of their order or privity, and for their or either of their use; and may set forth how and in what manner they have paid, applied, or disposed of the same, and of every part thereof; and that the said confederates may likewise set forth a full, true, and particular account of the said real estate, so devised to be sold by the said testator's will as aforesaid, and where the same lies, together with the names of the several persons in whose tenure the same now is, or hath been ever since the death of the said testator, together with the true and real annual rents, values, and produce thereof; and may set forth an account of the several sums of money which they or any other person or persons, and who for their or either of their use, have or hath received out of, or by the rents and profits of the said real estates, since the death of the said testator; and that the said confederates may set forth what right, title, interest, property, claim, or demand they or any, and which of them, respectively have, or pretend to have or claim to the said real or personal estates of the said testator; and that in case the said personal estate of the said testator, shall not be sufficient to pay and satisfy your suppliant's said demands, that then the said real estate may be sold, or so much thereof as shall be necessary, and that out of the money arising by such sale, your suppliant and others the creditors of the said testator, who shall come in and contribute to the expences of this suit, may be paid their said debts with interest and costs, and that all proper parties may join in the sale of the said real estate, in such manner as this honorable court shall direct, and that the several witnesses to the said will may be examined as to the execution thereof, and their testimony perpetuated; and that your suppliant may have such further and other relief in all and singular the premises aforesaid, as the nature and circumstances of his case shall require, and as to your lordship shall seem most meet; may it please your lordship, &c.

J. W. Testator, having settled his Estate on five of his younger Children, and given an additional legacy to his Daughter E. (after marriage with N. M.) makes the Complainant T. W. and P. W. his eldest Son Executors, and S. R. and two others deceased, his Overseers; with directions in his Will for his Executors to pass their Accounts twice a Year to the Overseers. Afterwards P. W. the Son, (the only acting executor) dies, and settles his Estate by Will on his Brother J. and Sisters, and makes the Complainant and T. W. (Joint-Executors with him to his Father) together with his Brother in Law N. M. his Executors. And the said N. M. and T. W. and S. R. (the Father's surviving Overseer) and J. and L. the Infants by W. W. their Guardian exhibiting their Bill against the now Complainant, to bring him to an Account for both the Estates of Father and Son: The now Complainant Exhibits his Cross-bill against them to bring the Executors and Overseers to an Account, and to have his Accounts or Copies of them that were passed to R. S. as Overseer, and of their several actings in the Premises.



To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY, &c. sheweth, &c. your suppliant S. V. Citizen and Merchant of Dublin, that J. W. late of Dublin, &c. was in his life-time seized and possessed of a very great estate, both real and personal, to the value of, &c. and being so seized and possessed, did about the 30th day of September, 1768, make his last will and testament in writing, and thereby devise and bequeath unto five of his children, viz. P. J. J. L. and K. several legacies and bequests, and also to his daughter
E. M.

E. M. wife to N. M. citizen, &c. one hundred and twenty pounds, having given her before a portion of five hundred pounds, in marriage with the said N. M. and did also by the said will appoint, that whereas he was possessed of several houses in Back-lane, Dublin, by lease, which were burnt down in a dreadful fire which happened in the said city, that his executors therein after named should rebuild the same, and the profits thereby afterwards arising, to be equally divided to and amongst his said five children, and the survivors of them, share and share alike: and did further direct, that whereas he had eleven hundred pounds in the East-India-company, that the same should not be taken out by his executors for ten years after his decease: and further in, and by the said will, he did desire that his executors should twice yearly meet with his overseers in the said will named, and make, give up and perfect a plain and full account and manifestation in writing unto, and with the said overseers of, for, and concerning all such monies, debts, payments, receipts, disbursements, and all other things touching his said estate, or any way concerning or relating to the execution of his will, fit and needful to be inserted therein: a copy of every which account and manifestation to be fairly writ and subscribed by his said executors, and delivered to his overseers, to the end that all other persons to whom his executors ought or should be liable to render and give any account, might receive and have a plenary satisfaction of his said executors proceedings in and about the performance of his will, not doubting of their care and fidelity therein. And the said J. W. in by the said will, did order and appoint, and it was his will, that his executors therein named, should with the advice and approbation of his overseers, or the survivor or survivors of them, lend to some good company, guild or fraternity in Dublin, or lay out in buying of leases for years, or upon mortgages, or to able persons upon bond, his said children's portions for the bettering of the same, and maintaining and educating his said children, wherein he desired their utmost care; and that in the ordering and disposing his said children's portions as aforesaid, if any loss should happen to the same, such loss should be borne by his children, and no part by his executors: and of the said will the said J. W. did make your suppliant and one T. W. citizen and grocer of Dublin, and his son P. W. executors, and S. R. T. M. and P. D. overseers,

as by the said last will of the said J. W. had your suppliant the same to produce, more fully would appear; and afterwards about the month of November, one thousand, seven hundred and eighty eight, the said J. W. died possessed of a great personal estate; consisting in ready money, and monies out upon securities; and your suppliant further sheweth unto your lordship, that afterwards your suppliant and the said T. W. and P. W. proved the said will, but your suppliant never possessed himself of any of the personal estate of the said J. W. other than the lease of the houses in Back-lane which he rebuilt, and received the rents, issues and profits of the same, great part of which he expended about the maintaining and educating the children of the said testator, and other part thereof in building and repairing the said houses, and other monies paid to the said P. to be employed to the management of the said estate. And your suppliant did not further act in the said executorship than as aforesaid. And your suppliant further sheweth unto your lordship, that the said P. at his said father's death, being about seventeen years old, and of sufficient discretion to manage the said estate to the best advantage, your suppliant with the said other executor Mr. W. was content, and were both very willing that the said P. should be the principal acting executor of the said will, to the intent he might be the better instructed in the management of the said estate, and make the best improvement thereof for the benefit of himself and his other brothers and sisters, which so nearly concerned him: and this they did the rather, for that they looked on the said P. to be very careful and trusty, and it might be as well an ease to them, as also a good employment for the said P. who had little or no other employment; and besides your suppliant being very aged and infirm, was unable and unwilling to meddle in the said executorship, nor did he meddle therein other than as aforesaid, by means whereof the said P. did altogether act in the said executorship, by receiving and paying all sums of money that any ways concerned or related to the said executorship, save only the said houses in Back-lane, which by reason of the nearness thereof to your suppliant's habitation, who lived, and still lives in one of them, was willing to undertake the management of them as aforesaid. And your suppliant further sheweth unto your lordship, that according to the directions of the said will, he did several times make
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up his accounts in writing, and delivered them to the overseers of the said will, all which accounts so delivered in by your suppliant as aforesaid, were true and just accounts of all the actings and dealings, and of all the receipts and payments about, or in relation to the personal and other estate of the said J. W. as by the said accounts, had your suppliant the same to produce, more fully would appear, the last of which accounts ended the eighth of March, one thousand, seven hundred and ninety two, which accounts are in the hands of the said S. R. the surviving overseer of the said will, the other two overseers being since dead, or in the hands of some other in trust for him, and where he may have access to the same: and your suppliant can give no other account of those sums, or the same again, unless he had those accounts, or true copies thereof. And your suppliant sheweth, that the said P. about the year of our lord one thousand, seven hundred and seventy five, made his last will and testament in writing, and thereby did devise his real estate near B. in Tipperary, to his brother J. W. and the heirs of his body, remainder to his sister L. and the heirs of her body, reversion to N. M. and his heirs for ever: and did also thereby give unto C. M. son of the said N. M. two hundred pounds, (and to several persons several other legacies) and the rest and residue of his estate unto his brother and sister J. and L. and of the said will made your suppliant, the said T. W. and N. M. executors, and soon after died possessed of a very considerable estate both real and personal, to a very great value, as in and by the said will, had your suppliant the same to produce, more at large might appear. And after the said P. W. his death, your suppliant joined with the said T. W. and N. M. in the probate of the said will in the prerogative court, but never intermeddled more in the said executorship, or with the estate of the said P. W. but the same hath been wholly managed by the said N. M. who hath ever since P.'s death received and paid all sums, and done all other acts relating to the said P. W.'s estate, and likewise to the said J. W.'s estate, whereby he hath gotten into his hands great sums of money, and other goods and chattels of a great value. BUT SO IT IS, may it please your lordship, that the said N. M. and T. W. combining with the said S. R. J. W. and L. W. children of J. deceased, and W. W. doctor in physick, and having by cunning insinuations

insinuations persuaded the said J. and L. to believe that great part of the estate of J. W. and P. W. is in the hands of your suppliant, albeit they well knew the contrary, and that upon a fair account the said estates will be much indebted to your suppliant, besides several sums not mentioned in such accounts lent by your suppliant to the said P. which your suppliant hopes he may retain in his hands, or be reimbursed the same by the said N. M. who hath got all the estate of the said P. into his hands, they the said N. M. and T. W. have either caused or procured the said J. W. the son and L. W. (who are infants) by the said doctor W. their next friend, to exhibit a bill in this honorable court against your suppliant, or else to manage the suit in the said doctor W.'s name as guardian for the infants, against your said suppliant, to call him to an account for his transactions in the said estate, thereby intending to charge your suppliant with the whole estates of the said J. W. and P. W. although they well knew, and so the truth is, that your suppliant never intermeddled with any part thereof, save only the said estate in Back-lane; and the better to colour such their pretences, have likewise consented and procured themselves to be made parties to the said suit; and that there may be little or no prosecution at all against them the said M. and W. therein, or if any, the same is only for form sake, and the charges thereof designed to be laid upon the said J. and L. W. and the same suit was wholly prosecuted by the contrivance of the said W. and M. or one of them, on purpose to take off the burthen that lay upon them to account for their transactions in the said several estates, by charging your suppliant, notwithstanding the said P. W. was the only acting executor, and the only person that used to receive and pay any monies, or act any other business concerning the said estate of his said father: and that the said N. M. hath been the like acting executor in Paul's estate, who as executor is chargeable with the acts and defaults of P. in and about the management of his father's estate: and your suppliant abating the receipt of Back-lane rents, never acting in the management of either of the said estates, unless the same were by implicit consent to confirm the actions of the said P. and also by the said bill design to charge your suppliant solely for all the joint actions of the said P. W. and T. W. with your suppliant, touching the said J. W.'s estate, who if any joint neglect were, ought to be equally contributory to the same. And
likewise

likewise by the said bill they charge your suppliant to give an account of all the receipts and disbursements by him in the said estates, for which he accounted to the said overseers, well knowing that he cannot possibly make any account of such his receipts and disbursements without sight of such his accounts, or true copies thereof, in regard he hath no copies of his own as aforesaid; and the said accounts by the combinations aforesaid, are detained and concealed from your suppliant, who hath no means to discover the said accounts, or to have copies thereof, or to defend himself against the said unjust proceedings of the said confederates, or to be relieved in the premises, but by the aid and assistance of this honorable court. TO THE END THEREFORE that your suppliant may be the better enabled to make such accounts as shall be required from your suppliant, he humbly prays that the said confederates may set forth the said accounts so delivered in by your suppliant as aforesaid, unto the said overseers; and that such of them as shall be discovered to have the same, or in the custody of any other, to their or any of their use, may upon oath deliver to your suppliant true and authentic copies thereof; and also that they the said confederates may severally set forth whether the said P. was not the chief acting executor of the said testator J. W. and whether your suppliant, to their, or any of their knowledges, ever acted any thing touching the said estate, without the presence or consent of the said P. W. (save only about the estate in Back-lane,) and whether such actings of your suppliant were not only to confirm what P. had designed, and if otherwise, that then they the said confederates may particularize, so that your suppliant may not be chargeable with other mens actions: and that they the said confederates may also set forth whether the said N. M. hath not been the only person that hath managed the said P.'s estate as executor, or who hath been so, or whether your suppliant hath any wise intermeddled therein, otherwise than by joining in the probate of the said P. W.'s will with them the said W. and M. and also that all the confederates may true answer make to all and singular the premises, and your suppliant be relieved according to equity and good conscience, and that this your suppliant's bill may be deemed and taken to be a cross bill, as against the plaintiffs in said original suit, and that they may stop proceedings in said original cause, until they shall have fully answered this your suppliant's bill. May it please, &c.

A Bill

A Bill brought against an Executor to discover the Testator's Personal Estate.



To the Right Hon. John, Lord Visc. Fitzgibbon, Lord High Chancellor of Ireland.

HUMBLY, &c. sheweth, &c. your suppliant R. H. of Dublin merchant, that your suppliant having been bred up a merchant, and for several years last past following the trade of a merchant within the city of Dublin, and other places within the kingdom of Ireland, and other parts beyond the seas, and selling divers wares, goods and merchandizes to several persons, did at several times sell and deliver unto one W. T. late of Dublin grocer, several hogsheads of tobacco and sugar, amounting to a very considerable sum of money, and the said W. T. coming to an account with your suppliant touching the same about the month of January, which was in the year of our lord one thousand, seven hundred and ninety; it was then found, and did appear, that the said W. T. was indebted unto your suppliant in the sum of two hundred and seventy five pounds, nine shillings and four pence, as appears by the account so stated as aforesaid. And your suppliant further sheweth, that shortly after the stating and settling the said account, the said W. T. died possessed of, interested in, and intitled unto a very great and considerable personal estate, consisting in leases of houses, mortgages, ready money, plate, jewels, household-stuff, wares and merchandizes, debts due upon bonds, bills or other specialties, and upon notes, promises, accounts, or otherwise, for shop-goods, wares and merchandizes, and other goods and chattels of a very considerable value, sufficient to satisfy and pay all his just debts with a great overplus, which at the death of the said W. T. were in his own possession, or in the possession of some other person or persons in

in trust for him. And your suppliant further sheweth, that the said W. T. being so possessed as aforesaid, on or about the tenth day of March, in the said year of our lord one thousand, seven hundred and ninety, made his last will and testament in writing, and thereof made J. T. his son sole executor thereof, and shortly after died; after whose death the said J. T. proved the said will, and took upon him the execution thereof, and continued his father's trade of a grocer, and possessed himself of all his said father's estate and trade, consisting as above, which was very considerable, and more than sufficient to satisfy his father's debts; and before any account was taken of the goods, wares and merchandizes, whereof the said W. T. was possessed at the time of his death, did continually vend and sell the shop-goods, wares and merchandizes for the space of three months, or some other time, which your suppliant taking notice of, the said J. T. told your suppliant, that his selling the goods should be no prejudice to him, or to any other of his father's creditors, for that there were enough to pay all the debts of the said W. T. his father, with an overplus to himself, and promised to pay your suppliant the said sum of two hundred and seventy five pounds, nine shillings and four pence, due to your suppliant as aforesaid, upon the said stated account, in a very short time, in case your suppliant would forbear suing and prosecuting him at law for the same. BUT NOW SO IT IS, may it please your lordship, that when your suppliant repaired unto the said J. T. and expected to have received the said debt, so due unto your suppliant as aforesaid, the said J. T. instead of paying him the same or any parcel thereof, pretended that he had found out and discovered several debts due upon judgments, bonds, bills and other specialties, which would amount unto a greater sum than the estate of the said W. T. his father would satisfy and pay, and that there would not be any thing remaining of his father's estate, sufficient to pay your suppliant's debt, being only due to him in manner as aforesaid; whereupon your suppliant desired that he would give an account and particulars of the estate, and what was owing upon it, which he from time to time refused and delayed to do, putting off your suppliant with excuses and frivolous pretences; and the better to conceal his father's estate, he hath neglected to exhibit into the spiritual court a true inventory of the goods and chattels,

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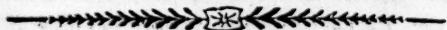
and

and other personal estate of the said W. T. or if any inventory is exhibited by him the said J. T. of the particulars whereof the estate consisted, or which are come to his hands, or to the hands of any other person or persons in trust for him, by his consent, delivery, knowledge or privity, some of the particulars of the said estate are omitted, and the values of them, in such inventory mentioned, are rated under the real worth and true values thereof: and the said J. T. pretends and gives out in speeches, that he will plead *plene administravit* to any action your suppliant shall bring at common law for the recovery of your suppliant's just debt as aforesaid, well knowing, that by the alteration of his father's estate, and the clandestine actions of the said J. T. your suppliant cannot prove the premises in so exact and strict a manner as is required by the common law of this kingdom; ALL WHICH ACTINGS AND DOINGS of the said J. T. are contrary to all equity and good conscience; *in tender consideration whereof*, and forasmuch as your suppliant is by reason of the fraudulent and clandestine practices of the said J. T. remediless in the premises, unless by the aid and assistance of this honorable court, your suppliant may have a particular discovery thereof by the oath of the said J. T. who well knows, and is satisfied in his conscience of the truth of all and singular the premises before herein set forth, who when called to answer the same upon his corporal oath, your suppliant well hopes will discover the same; TO THE END THEREFORE that he may do so, and in particular set forth a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said W. T. his deceased father, which he was possessed of, interested in, and intitled unto at the time of his death, and the particulars thereof, and whereof the same did consist, and also what debts were owing to him, and how, and which of them are paid, and by whom; and may also set forth when, and how long after the death of the said W. T. his father, any account, and what account was taken of the shop goods, wares and merchandizes, and what quantities thereof were sold, and how much money was received, and by whom, for him, before such account was taken, and whether he did not inform your suppliant that the estate was sufficient to pay all his father's debts with an overplus, and whether he

he did not promise to pay your suppliant the said debt in a very short time; in case your suppliant would not sue for the same, and the true cause and reason why his father's estate falls short of paying and satisfying his debts, and discover what he doth know, hath heard or been informed touching the same, with the several circumstances thereof, as if the same were again repeated, and in the prayer of this bill particularly interrogated. May it please, &c.



An amended Bill brought by the surviving Husband on the part of himself as Administrator of his late Wife, and also on the part of their Daughter, a Minor, against the Executors of his late Wife's Father, for discovery of the Assets of the Father, and also praying an Injunction against the defendant, suing Complainant at Law, for recovery of a Debt, due by him to the Defendant.



To the Rt. Hon. James, Lord Visc. Lifford, Lord High Chancellor of Ireland.

HUMBL Y complaining, shew unto your lordship, your suppliants and daily orators, W. W. of the city of Dublin, gent. administrator of all and singular the goods and chattels, rights and credits, which were of H. W. otherwise H. late the wife of your suppliant W. deceased, and H. W. the only child of your suppliant W. by the said H. deceased, by your suppliant W. her father and next friend; that your suppliants filed their original bill in this cause, on or about the day of in the year of our Lord, one thousand seven hundred and eighty five, by which, among other things, your suppliants charged as they now charge, the truth to be. That G. H. late of Largey, in the county of Cavan, gent. deceased, being in his life-time, and at the time of his death, seized and possessed of a considerable real and personal estate, in value, amounting in the whole to the sum of three thousand pounds and upwards, consisting of leases for lives and years, ready money, securities for money, cattle, household furniture, plate, and other articles; died some time in the year one thousand seven hundred and sixty eight, leaving two sons and five daughters, to wit, T. H. of the city of Dublin, esquire, M. H. spinster, A. H. otherwise T. then and now the wife of D. T. of Oatlands, in the county of Meath, gent. C. H. P. H. now the wife of J. G. of the city of Dublin, esquire, F. H. since dead,
and

and H. H. late the wife of your suppliant W. but now deceased, and no other issue; but the said G. H. before his death, duly made and published his last will and testament in writing, in presence of three credible subscribing witnesses, bearing date the second day of September, one thousand seven hundred and sixty seven, whereby, after bequeathing to the said T. whom he by his said will took notice of to be already well provided for, the sum of ten pounds to buy mourning, and to the said A. T. the sum of five pounds, she having received a sum of three hundred pounds on her marriage with the said D. T. devised all his remaining real and personal estate, assets and effects of what nature or kind soever, to his brother-in-law R. A. and to his son T. H. his executors therein named, IN TRUST, that the same should be sold by his said executors, and that all the money and produce arising from such sale, and all his other money and effects, should be equally divided amongst his other children, share and share alike, on their and each of their arriving at full age or days of marriage, deducting out of the share of the said C. fifty pounds, which he therein took notice, that he had already paid him, and that in case any of his said children M. C. P. F. or H. should happen to die before they arrived at the age of twenty one years, or should be married, that then the share or dividend of such child or children so happening to die, should be equally divided amongst all his children then living, except his said son T. and in case it should happen, on a distribution of his effects and fortune, that his said children M. C. P. F. and H. should thereby have more than three hundred pounds each, that then his said daughter A. T. should have an equal share with said other children, of what should remain after paying them three hundred pounds each, and of his said will, appointed R. A. of the city of Dublin, attorney, and the said T. H. his executors, who duly proved the said will in his majesty's court of prerogative in this kingdom, and took upon themselves the burthen and execution thereof, and by virtue thereof, sold and disposed of all and singular the real and personal estate of the said G. and applied the same as they thought fit; your suppliants further shew, that the said F. H. died soon after her said father, a minor, and unmarried; your suppliants further shew, that the said R. A. died some time in March, one thousand seven hundred and seventy six, leaving the said T. H. the surviving executor of the said G. H. who as such has possessed himself of all the

the estate and substance of said testator then undisposed of, to a very considerable amount, and has converted the same to his own use and benefit, without applying any part thereof to the purposes directed by the said will, although repeatedly applied to by your suppliant W. so to do; your suppliants further shew, that the said R. A. was in his life-time, and at the time of his death, seized and possessed of a considerable real and personal estate, amounting in the whole to the sum of ten thousand pounds and upwards, consisting of leases for lives and years, ready money, bills, bonds, notes and securities for money, debts, cattle, plate, jewels, household furniture, and divers other articles; and that he before his death, duly made and published his last will and testament in writing, in the presence of three credible subscribing witnesses, bearing date the ninth day of March, one thousand seven hundred and seventy six, whereby, after confirming certain deeds of lease and release therein mentioned to be dated the twentieth and twenty first days of February, one thousand seven hundred and sixty nine, and executed in favor of his wife, he devised and bequeathed all and singular his freeholds and leaseholds (except such part as in said deed mentioned) and also all the real and personal estate of what nature or kind soever (except as aforesaid) which he should die possessed of or entitled unto, unto J. C. of the city of Dublin, esquire, and the said T. H. his nephew, and the survivor, and the executors or administrators of such survivor, IN TRUST to pay all his just debts, and the legacies therein mentioned, (amounting in the whole to the sum of nine hundred and seventy five pounds) and directed and impowered said trustees, or the survivor, his executors or administrators, to sell to the best advantage, all said freehold and leasehold interests, (except as aforesaid) as also all such real and personal estate or other property, whereof he should die possessed, to answer the payment of said debts and legacies, and after bequeathing the issues and profits of his lease of Whitehouse-farm near Santry, in the county of Dublin, to his sister P. during her life, subject to two annuities therein mentioned, he devised and bequeathed all the rest, residue and remainder of his said estate, fortune and substance, after payment of his debts, legacies, annuities and funeral expences, to be equally divided between his nephew, the said T. H. and his nieces, the said M. H. A. T. P. H. now G. and the said H. H. your suppliant W.'s late wife as aforesaid, share and

and share alike, and of said will appointed the said J. C. and the said T. H. his executors, but the said J. C. having declined interfering, renounced the execution thereof, the said T. H. the other executor, having duly proved the same, obtained administration from his majesty's court of prerogative in this kingdom, and undertook the burthen and execution thereof, and has possessed himself of all the estate and effects of the said R. A. to a very considerable amount, and sold and disposed of all and singular the real and personal estate of the said R. except the said lands called Whitehouse-farm, and converted the same to his own use, regardless of the purposes intended by said will, and except such parts thereof as he by or through gross negligence or his own wilful default omitted or declined to call in and sue for, he the said T. H. having often declared he never gave directions to any person whatsoever, to prosecute or defend any suits in his name, as executor of said G. H. or R. A. for recovery of any part of the assets or effects of the said testators, or either of them; your suppliants further shew, that in the year one thousand seven hundred and eighty one, a treaty of marriage was set on foot between your suppliant W. and the said H. H. which was soon after solemnized, but the said H. died in the month of January, one thousand seven hundred and eighty three, leaving issue of said marriage, lawfully begotten, your suppliant H. W. and none other; your suppliants further shew, that previous to the solemnization of the said marriage, certain articles were executed, bearing date the twenty third day of August, one thousand seven hundred and eighty one, whereby it was agreed, that in case the said H. should happen to survive your suppliant W. that said T. H. and G. P. D. esquire, or the survivor of them, the trustees therein mentioned, should pay and apply the sum of four hundred and thirty pounds, five shillings and eight pence, part of the fortune of said H. therein mentioned, for the use and behoof of the said H. and the issue of said marriage, in such manner as they should think proper, but nevertheless, to permit and suffer your suppliant W. and his assigns, in case of the death of the said H. to call in the said principal sum, and to dispose thereof as he should think proper, without the control or intermeddling of the said trustees, and it was by the said articles further provided and agreed, that the said last mentioned trustees should apply and dispose of all and every or any other sum or sums of money, which the said H. then

then was, or afterwards should be entitled unto, under the will of said G. H. and R. A. respectively, in the same manner, and subject to the same uses as herein before mentioned, in respect to the said principal sum of four hundred and thirty pounds, five shillings and eight pence; your suppliant W. further sheweth, that soon after his intermarriage with the said H. the said T. H. pretending that it was not convenient for him then to settle with your suppliant W. upon the foot of the fortune of the said H. he agreed to answer the then occasions of your suppliant W. to advance him a sum of one hundred pounds, which sum your suppliant W. was to pay to the said T. upon his receiving so much of the said H.'s fortune, but which sum was not to be payable with interest; and your suppliant W. sheweth, that in pursuance of said agreement, a bond or Kerry bill was filled up, ready to be duly executed by your suppliant W. by which your suppliant W. bound himself in the penal sum of two hundred pounds, conditioned for the payment of the sum of one hundred pounds to the said T. H. at or upon the receipt of so much of your suppliant's wife's fortune; but your suppliant sheweth, that when the said bond was so prepared, the said T. not having or alledging that he had not the whole sum of one hundred pounds then ready to advance, he on or about the sixth day of September, one thousand seven hundred and eighty one, agreed to advance, and did advance your suppliant W. a sum of thirty four pounds, two shillings and six pence, for which sum he took your suppliant's promissory note, payable on demand; and the said T. H. afterwards, to wit, on or about the twenty fifth day of October, one thousand seven hundred and eighty one, advanced to your suppliant W. a further sum of forty five pounds ten shillings, for which your suppliant W. also passed his promissory note, payable to the said T. on demand; and your suppliant W. further sheweth, as the truth and fact really is, that at the times he passed the said two notes, it was agreed upon between the said T. and your suppliant, that as soon as the said T. should settle with your suppliant, on account of his wife's fortune, that the said notes should be given up to, and taken by your suppliant as payment of so much of the said fortune, and that whatever sum over and above the amount of the said notes, should appear due to your suppliant, should be paid over to him by the said T. he the said T. at the time of taking the said notes, well knowing, that on a settlement of accounts, he would appear indebted

indebted to your suppliant W. in a considerable sum; and your suppliants shew, that if the said T. H. would come to a just and fair account with your suppliants, touching the assets and effects of the said G. H. and R. A. which came to his hands, and which he disposed of as aforesaid, as the principal acting trustee and executor in and under the wills of the said G. and R. respectively, it would appear that a very considerable sum would be coming to your suppliant W. as representative of the said H. late his wife, over and above the sums in said two notes mentioned, and your suppliant W. therefore frequently applied to the said T. H. for such account, which he well hoped the said T. would have complied with. BUT NOW SO IT IS, may it please your lordship, that the said T. H. combining and confederating with the said D. T. gent. and A. his wife, and R. A. T. their son, M. H. C. H. J. G. esquire, and P. his wife, J. P. gent. W. M. K. gent. and H. his wife, W. C. J. W. — N. gent. and P. his wife, and J. A. widow, and divers others at present unknown to your suppliants, whose names when discovered, they pray leave to add as parties hereto, with apt words to charge them, who respectively claim some interest in the premises, refuses to furnish your suppliant W. with any account, or to give him any information whatever, relative to the estate and effects of the said G. H. or R. A. sometimes alledging that neither of them left sufficient property to discharge their just debts and legacies, although your suppliants expressly charge, that the said G. H. left assets sufficient, not only to pay his debts, but also his said legacies of three hundred pounds to each of his children, but also a very considerable overplus, and in evidence, your suppliants charge that the said R. A. in his life-time, paid unto the said A. T. or her said husband, a sum of three hundred pounds or thereabouts, as her the said A.'s share of said overplus, after and over and above the payment of three hundred pounds each, to his said other children, and though it appeared by the books and entries of said R. what sums, and what part of the personal estate of said T. H. came to his the said R.'s hands; yet the said T. H. now the only surviving executor of said G. and the only acting executor of said R. refuses to furnish a fair and full account of the assets and effects of said G. and R. respectively, but also pretends your suppliants are not entitled to such account, or to any part of such surplus or residue as shall or may appear to remain; and the said T. gives out and pretends, that

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the house in William-street, in the city of Dublin, in which the said R. formerly lived, was settled on the said R. A.'s wife, by some deed executed by the said R. in his life-time, although your suppliants expressly charge, that no such deed ever was executed, nor is there any registry thereof in the register office in this kingdom, and the said T. claims an allowance for several sums which he alledges he paid and allowed to one D. T. whom the said T. alledges he employed as his agent and receiver in the country, although your suppliants expressly charge, that if the said T. was employed, it was without the privity or consent of the persons interested, and particularly without the consent of the said H. your suppliant W.'s late wife, in her life-time, or of your suppliants, and your suppliants shew, that the same is a fabricated charge, and ought not to be allowed, inasmuch as the said T. never claimed any allowance on account thereof, nor ever pretended he had paid the same, until your suppliants had filed their original bill in this cause; and the said T. H. having permitted one R. W. one of the tenants of the lands of Kilmoretrange, to run in arrear of rent, to the amount of five hundred and three pounds, he the said T. took upon himself, without the privity or consent of any of the persons interested, and particularly without the consent of the said H. your suppliant's late wife, in her life-time, or of your suppliants, to accept of a surrender of the said W.'s lease of said lands, and to forgive him all the said arrear of rent, and now the said T. alledges that he ought not to be accountable for the said sum of five hundred and three pounds, or any part thereof, although your suppliants charge, and the truth and fact really is, that the same was suffered to accrue due by the default or negligence of the said T. and therefore submit to this honorable court, that he ought to be accountable for the same, and the said T. H. also took upon himself, without the permission or consent of the residuary legatees, in the will of the said R. A. named, to make a compliment or present to the widow of the said R. of several articles of household furniture and plate, to the amount of pounds, or thereabouts, and your suppliants expressly charge, that the same was so given by the said T. without the consent, and expressly against the will and desire of the said H. your suppliant's late wife, and the said T. by neglecting to sell the interest of the said R. A. in the lands, in the will of the said R. A. mentioned, and which being held by determinable leases, every day decreased

decreased in their value, by which neglect the said T. very much diminished the fortune of the said residuary legatees, and the said T. also claims a sum to be due to him for interest for the different sums alledged to be from time to time advanced by him as executor of the said G. H. and R. A. although the said T. refuses to charge himself with interest for the sums by him received, and the said T. notwithstanding he has never yet come to a just and fair settlement with your suppliant W. touching the premises, and although there is a large sum still due to your suppliant W. on account thereof, and notwithstanding the agreement herein before mentioned, made between your suppliant W. and the said T. has as of last Michaelmas term, caused a declaration to be filed against your suppliant W. in his majesty's court of King's bench in this kingdom, for the recovery of the amount of the said two notes, herein before mentioned, and threatens that he will obtain judgment and execution against your suppliant W. and throw your suppliant W. into goal, and thereby deprive him of the means of proceeding in this cause, and of establishing his and your suppliant H.'s just claims against him the said T. **ALL WHICH ACTINGS AND DOINGS** of the said T. H. and his confederates, are contrary to equity and good conscience, and manifestly tend to injure your suppliants; *in tender consideration whereof*, and inasmuch as matters of this nature are properly cognizable before your lordship; **TO THE END THEREFORE**, that the said T. H. and his confederates respectively, may true, full, perfect and distinct answers make, on his and their corporal oaths, on the holy Evangelists, to this your suppliants bill, not only as to his and their respective knowledge, but as to his and their credible hearsay, information and belief, as fully and particularly as if the same was herein again repeated, and he and they thereunto interrogated, paragraph by paragraph, and more particularly, that the said T. H. may in like manner set forth and discover, whether the said G. H. did not die in the year one thousand seven hundred and sixty eight, or at what other time, and when particularly, possessed of a considerable estate real and personal, and to what amount, and of what the same particularly consisted, leaving the said T. H. M. H. A. H. otherwise T. C. H. P. H. F. H. since deceased, and H. H. or any other, and what issue; and whether the said G. H. did not before his death, duly make and publish his last will and testament in writing, of such
date

date and import as herein before particularly mentioned, or of what other date and import, and thereof appoint such persons executors as herein before is mentioned, did not the said executors duly prove said will in his majesty's court of prerogative in this kingdom, or in what other court, and take upon themselves the burthen and execution thereof, and into whose hands did the real and personal estate of the said G. H. and every, or any, and what parts thereof respectively come, and what was the nature, amount, particulars and value yearly, and otherwise, of such part or parts thereof, as came to the custody, power and possession of the said T. H. and R. A. respectively, in the life-time of the said R. and how, and to whom, and when, and for what consideration, was and were the same respectively applied and disposed of, and whether the said R. A. did not die some time in March, one thousand seven hundred and seventy six, or at any other, and what time, and whether the said T. H. is not the surviving executor of the said G. H. and has he not as such, or as executor of the said R. A. or how otherwise, possess himself of all the estate and substance of the said R. and to what amount in yearly and other value, and let him set forth the particulars and yearly and other value thereof, and how, and for what consideration, and when, and to whom applied and disposed of, and hath not the said T. neglected applying the same, or any, and what part of the same, as directed by said will, and whether your suppliant has not repeatedly applied to him to furnish your suppliant W. with an account of the said G. H.'s and R. A.'s property, and has he not under various, and what pretences, refused or postponed furnishing the same, and whether your suppliants, or any, and which of them, are not entitled to the said account, and to a distributive share of the fortune and effects whereof the said G. H. died possessed and entitled, or to any other, and what part thereof, has any, and what sum been paid, and when by the executors of the said G. H. or either of them to the said D. T. in right of the said A. his wife, out of the assets of the said testator, and if so had not the said H. in her life time and your suppliants, or one of them in her right, and the several other children of the said G. or any, and which of them an equal right to a like sum under the will of said G. or how otherwise; and whether the said R. A. did not die sometime in March, one thousand, seven hundred and seventy six, and where particularly possessed of a considerable estate
real

real and personal, and of what the same particularly consisted, and into whose hands did the same respectively come and what was the yearly and other value of the same, and how, and to whom, and for what consideration, and when was and were the same respectively applied and disposed of, and whether he did not duly make and publish such last will and testament of such date and import as herein before mentioned, or of what other date and import, and thereof appoint such persons executors as herein before mentioned, did not the said J. C. duly renounce the execution of said will, and did not the said T. H. in consequence thereof, and as trustee and executor to said R. A. or how otherwise, possess himself of all the estate and substance of the said R. A. and to what amount, and has he not repeatedly, and why so refused to furnish your suppliant W. with any account thereof, was not the marriage herein before mentioned duly had and solemnized between your suppliant and the said H. H. at the time herein before mentioned, or at any other, and what time, and was not the said T. present thereat, were not the articles of the date and import herein before mentioned, or of any other, and what date and import, entered into previous to the solemnization of said marriage, and was not the said T. H. an executing party thereto, and what are the particulars and amount of the debts of the said G. H. and R. A. respectively, and how secured, and to whom due, and how much was then really due upon each of such securities at the times of their respective deaths, and what sums of money have been paid on account thereof, and to and by whom particularly have any steps been taken for recovery of any part of the property of the said G. H. or R. A. and if so by whose advice or consent, and what sum has been paid on account of such proceedings; and that the said T. H. may before he answers this your suppliant's bill, view in the hands of your suppliant's fix clerk, a certain paper writing to be to him produced, and endorfe his name thereon, and set forth in his answer hereto, whether the same or any, and what part thereof is or is not of his proper handwriting, and at what time, and for what reason the same was written, and whether the matters therein stated are not true, or how otherwise, and whether the same was not written by the said T. in the absence of your suppliant W. and whether the same was not handed over to

to your suppliant W. by the directions of the said T. or how otherwise; and that the said T. H. may set forth full, true, perfect and exact accounts by way of schedules to his answer to this your suppliant's bill, of all and singular the estate and substance whereof the said testators severally died possessed, distinguishing such part of the said G. H.'s property possessed by the said R. A. from that possessed by him the said T. together with the nature, qualities and quantities thereof, and of every part thereof, and by whom received, and when particularly, and how disposed of, and of all debts due and owing to them and by them respectively at the time of their respective deaths, and how secured, and the dates of such securities, and how much hath been received, and by whom, and what remains due on each separate account; whether the said R. A. was not an attorney of good character, and as such employed by several persons in prosecuting and defending various suits in law and equity; was there any, and what sum due to the said R. A. at the time of his death, and by whom on account thereof did the said T. examine the books and papers of the said R. A. at any time since his death, and when, and in what condition were the same or any of them at the time of such examination, and in what condition are they now, were there any of them torn, cut, burnt, or otherwise defaced or destroyed, and if so, why so, and by whom, were all the debts which were due to the said R. A. recovered or called in by the said T. H. and were there any, and what steps taken for the recovering or calling in of the same, and when and by whom, had not said R. A. a lease of lives renewable for ever of a considerable interest in lands in the county of Kildare, was there not a suit instituted by him as executor of said R. or how otherwise, for a renewal of said lease, and was there not a considerable sum of money expended on account thereof, was not his answer to a cross bill filed by the parties defendants in said original cause perused by an eminent counsel, and what sum was paid for such perusal, and did not said lawyer advise the prosecution of said suit, would he have done so had he not expected, and had not the said T. in consequence thereof a right to expect, and did he not expect a decree for a renewal of said lease upon the final hearing of said cause, did not the said T. compromise the same without the advice or consent of your suppliant W. and contrary to his
request,

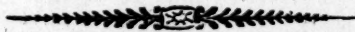
request, did and not your suppliant W. by letter, dated the seventeenth day of July, one thousand, seven hundred and eighty three, expressed his disapprobation of such compromise, was not said letter in the words and figures following, that is to say [set out the letter verbatim] or how otherwise, was not the interest in the lease of said lands lately sold by said T. H. as said R.'s executor, why were not the persons interested in the sale of said lands informed thereof, had the persons in the neighbourhood of said lands notice of such sale, and if not why not, was not said T. informed of the propriety and advantage which would arise from having rentals distributed before the time of sale, were there any rentals prepared, and when, or was there ever any satisfactory information given relative to said lands, and were not the said lands purchased in trust for him the said T. H. or how otherwise, and what is the yearly profit thereof, what interest had the said R. A. at the time of his death in the house in William-street, in the city of Dublin, wherein he lived, did he in any, and what manner, by what deed, when dated and registered, dispose thereof, in whose hands, power or custody is the said deed, what are the short contents thereof, and who are the witnesses thereto, and has not the said T. as his executor any, and what interest therein, has not the said T. often declared, and is it not his opinion, that he cannot be made accountable for any part of the property of said testators, save what he actually received, and has he not in consequence of such opinion, or for what other reason, suffered great losses to arise to the estate of the said R. A. and consequently to the injury of his residuary legatees, did the said T. ever employ the said D. T. as agent or receiver and by whose consent, or was any consent in writing for that purpose, did he ever pay said T. any money on account thereof, and when, and did he ever make any charge or claim any allowance for the same until your suppliants filed their original bill in this cause, and if not, why did he not do so, did not the said T. permit the widow of the said R. A. to enjoy several articles of plate and household furniture, and what were the particulars and value thereof respectively, had he the consent of all or any of the residuary legatees in the will of the said R. named for that purpose, and if he had, was the same in writing, or how otherwise, were not the said two notes herein before mentioned passed

passed for the reasons before particularly set forth, and was not such agreement as before mentioned entered into on that occasion, between your suppliant W. and the said T. or how otherwisse, does not the said T. now refuse to allow the same to your suppliant W. as part of the sum due to him pursuant to said agreement, and has he not commenced an action against your suppliant W. for the recovery of the amount of said notes; and that the said other confederates may set forth what interest they respectively claim in the premises, and that the said T. H. may be obliged to come to a just and fair account with your suppliants respectively, touching the trusts reposed in him by and under the said last wills and testaments of the said G. H. and R. A. respectively, and the administration and disposition of the estate and effects real and personal of the said G. H. and R. A. which into his hands, and to the hands, power or custody of the said R. in his life-time respectively came, and which they respectively received, or without their respective wilful default might have received, and that the rights of your suppliants thereto may be respectively declared, and that the same or such part thereof as your suppliants or any of them shall appear to be justly entitled to, may be paid and handed over to your suppliant W. according as such right shall appear or be otherwise disposed of as to your lordship shall seem fit and just, and that the said T. H. may be restrained by the injunction of this honorable court, from proceeding at law against your suppliant W. for the recovery of the amount of the said two notes herein before mentioned, until the final hearing of this cause or your lordships order to the contrary, and that your suppliants may be relieved in all and singular the premises, according to the nature, merits, and circumstances of their respective cases, as the same shall at the hearing and in the progress of this cause by the rules of equity and good conscience appear to require, and that this bill may be deemed and taken as an amendment of your suppliants said original bill, and that the said confederates may be obliged to answer the same upon being served with a copy hereof, and being paid the costs in such case usual. May it please your lordship to grant your suppliant his majesty's writ of injunction to be directed to the said T. H. and J. A. their counsels, attorneys, agents, solicitors and managers, and every of them, requiring and commanding them to stop and sur-
cease

cease from all further or any proceedings at common law against your suppliant, touching any of the matters contained in this your suppliant's bill, and that the said T. H. and his confederates may stand to and abide such order, judgment and decree as your lordship shall please to make in the premises for your suppliants relief, and your suppliants will pray.



The Plaintiff having taken a Farm in Partnership with the Defendant's Husbana, brings this Bill against the Widow as Executrix of her said late Husband, for an Account of the Profits of said Farm, and for other Purposes.



To the Right Hon. John, Earl of Clare, Lord High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship, your suppliant and daily orator H.C. of Parliament-street, in the city of Dublin, woollen draper, that it having been in or about the month of September, one thousand seven hundred and eighty five, agreed upon between your suppliant and W. T. late of Marybone-lane, in the county of the city of Dublin, distiller, to purchase P.'s interest in the lease of the farm of the lands of Ballyboggan, in the county of Dublin, with the quarry therein, and dwelling house, and lime-kiln thereon, and to hold the same farm in partnership, and to become partners as far as concerned the business of said quarry farm, and mutually and equally to share the profits which should be by the management of the said farm, in consequence of said agreement, the aforesaid P.'s interest in his lease of the said farm of Ballyboggan, with the quarry thereon, and dwelling house, and lime-kiln thereon, being set up to be sold by the then high sheriff of the said county of Dublin, under an execution, in or about the said month of September, one thousand seven hundred and eighty five, was bought at said high sheriff's sale, by your suppliant, for himself and said W. T. for the sum of thirty one pounds, seventeen shillings, which said sum your suppliant avers truly to have paid of his own separate and proper money; and your suppliant further shews, that by virtue of such purchase, your suppliant and said W. T. entered into the possession of the aforesaid farm and concerns, and it was then agreed upon, that deeds, declaring a partnership between

between your suppliant and W. T. in said farm and concerns, and in conducting the business of said farm, quarry and lime-kiln, but which partnership was not to extend to any other business whatsoever, should be executed by your suppliant and said W. T. and in consequence thereof, a proper instrument to that effect was prepared and drawn up by the late counsellor G. J. B. which said instrument is now in the possession of either J. B. attorney at law, or of M. T. relict and administratrix of the aforesaid W. T. for your suppliant further sheweth, that the execution of the aforesaid instrument, having been by various accidents delayed till after the time of the death of the aforesaid W. T. which happened on or about the twenty second day of January, one thousand seven hundred and ninety one, said instrument was never in fact executed by your suppliant and said W. T. and your suppliant further sheweth, that at the time of entering into said partnership, it was agreed upon, that the said W. T. should keep the books of account of said partnership, and manage the concerns thereof, and accordingly your suppliant further sheweth, that the said W. T. did keep the books of accounts, and dispose of all the stones dug out of the quarry, and of all the lime burned in the kiln, and that he the said W. T. did receive all the monies and payments which were made for the said stones and lime, and for all other profits whatsoever, accruing from the produce of the said farm, quarry, and lime-kiln, and arising from said partnership business, from the commencement of the said partnership, till the time of his the said W. T.'s decease, which happened on or about the time herein before mentioned, during all which time the said W. T. never came to any account whatsoever with your suppliant; and your suppliant further charges, that during the continuance of the said partnership, your suppliant made several large payments on account of said partnership, and advanced several large sums of money to the said W. T. for the better carrying on the business of the said partnership trade, to the amount of six hundred pounds and upwards, and that the said W. T. consumed and employed a large quantity of lime and stone belonging to the said partnership, at his distillery, at Marybone-lane, in the said city of Dublin, the business whereof was then carried on by the said W. T. for his own sole and separate use and benefit, and unto which your suppliant had no concern, and by receipt of the payments made to said W. T. on account of said partnership,

partnership trade, to a large balance, on the profits of said partnership trade, due to your suppliant at the time of the decease of the said W. T. and the said W. T. so died indebted to your suppliant, to a large amount; and your suppliant further sheweth, that the said W. T. dying intestate, his widow, the said M. T. obtained letters of administration of all and singular the goods, chattels, rights, credits, effects and personal estate of the said W. T. out of his majesty's court of prerogative, or some other ecclesiastical court in this kingdom, by virtue whereof, the said M. T. possessed herself of the entire of the personal property of the said W. T. and possessed herself also of the books of accounts of the said partnership, which had subsisted between your suppliant and her late husband, the said W. T. and called in and received several debts which were due to the said W. T. and your suppliant, for and on account of the said partnership; your suppliant further sheweth, that the said M. having as aforesaid, possessed herself of the books of the accounts belonging to the said partnership, your suppliant applied frequently to the said M. for the inspection of said books of account of said partnership, that the whole of the debts due and out standing to the said partnership, might be called in, and that an account might be settled between your suppliant and the said M. as administratrix of the said W. T. for and in respect of the said partnership dealings, and that the said M. should discharge the balance due to your suppliant by the said W. T. at the time of his death, for and on account of said partnership, which the said M. hath constantly refused to do, although as your suppliant charges, a considerable balance now remains due to him, as would appear upon the inspection of the said books of account, had your suppliant the same to inspect, but which the said M. declines to permit your suppliant to do; your suppliant further sheweth, that having in some time after the death of the said W. passed a bill of exchange for the sum of seventy two pounds, thirteen shillings and four pence, with his your suppliant's indorsement thereon, unto the said M. T. which bill of exchange not having been paid when due, the said M. T. kept the said bill of exchange several days in her possession, without ever resorting to your suppliant for the payment thereof, or giving your suppliant the legal, or any notice of the nonpayment thereof; your suppliant further sheweth, that the said M. T. in some time after, and when your suppliant

by the rules of law, totally discharged from the payment of the said bill of exchange, sent or returned the same unto your suppliant, with the view or intent that your suppliant should give her credit for the amount thereof, in the account to be settled between the said M. T. administratrix of the said W. T. and your suppliant in respect to the aforesaid partnership trade, and which your suppliant notwithstanding he was aforesaid exonerated from the payment of the said bill of exchange, was always, and is now ready and willing to do; your suppliant further sheweth, that the said M. T. that your suppliant kept or retained the said bill of exchange, and which your suppliant expressly charges, he did upon the terms, and with the intent only of allowing the said M. the amount thereof, upon the settlement of accounts between her as administratrix of the said W. and your suppliant, of the aforesaid partnership trade, she the said M. took advantage thereof, and now insists that your suppliant by returning the said bill, is now become liable and bound to pay the said M. T. the amount thereof, without the said M.'s coming to any account whatever with your suppliant, for or in respect of said partnership trade, and the said M. T. in order to compel your suppliant to the payment of said bill of exchange, hath lately brought her action against your suppliant, in his majesty's court of King's bench in Ireland, for the said sum of seventy two pounds, thirteen shillings and four pence, as for money he had and received for her use by your suppliant, and is now proceeding therein, and declares she will go to trial thereon, without coming to any account with your suppliant, for or in respect of the aforesaid partnership trade, on the settlement of which, your suppliant expressly charges the said M. as administratrix of the said W. would be found indebted unto your suppliant, in the sum of six hundred pounds; your suppliant further sheweth, that he hath frequently before and since the said M. commenced her said action against your suppliant, by himself and others, in a friendly manner applied to the said M. to produce the said books of account of said partnership, and to come to a just and fair account and settlement with your suppliant on the foot thereof, and to pay your suppliant what should upon such settlement appear to be due and owing unto him by the said M. as administratrix of the said W. T. and your suppliant proposed and offered, and by this his bill doth propose and offer, to allow the said M. the said sum of seventy two pounds
thirteen

thirteen shillings and four pence, upon the settlement of said partnership account, and your suppliant well hoped, that the said M. T. would have complied with such your suppliants reasonable offers and proposals, as in justice and equity she ought to have done, BUT NOW SO IT IS, may it please your lordship, that the said M. T. combining and confederating to and with divers other persons to your suppliant unknown, whose names when discovered your suppliant prays may be inserted in this his bill of complaint, with apt words to charge them, how to defeat your suppliant of his just demand, she the said M. T. gives out and pretends, that no partnership business whatever subsisted between your suppliant and the late W. T. nor was ever carried on by them, and that she is not in the possession of any books of account of any such partnership, and that there does not remain any ballance due to your suppliant by the late W. T. and that your suppliant has no right to detain in his hands the said seventy two pounds thirteen shillings and four pence, the amount of the said bill, and that your suppliant never made any advances of money or payments of money to or for the late W. T. on the score of any partnership transaction, whereas your suppliant expressly charges, that the aforesaid farm of Ballyboggan, quarry and lime-kiln, were purchased and holden in partnership by your suppliant and the said W. T. and that the profits arising from the conducting the business thereof were to be equally divided between them, and that your suppliant made several advances and payments of money on account of said partnership business, and your suppliant expressly charges, a very large ballance remains now due to your suppliant on score of said partnership by the said M. as administratrix of her said late husband the said W. T. to at least five times the amount of the said sum of seventy two pounds thirteen shillings and four pence, which your suppliant on this account expressly charges he has a right to detain; ALL WHICH ACTINGS DOINGS AND PRETENCES of the said M. T. and her confederates, are contrary to equity and good conscience, and tend to your suppliant's manifest wrong and injury, *in tender consideration whereof*, and forasmuch as your suppliant is altogether remediless in the premises by the strict rules of the common law, and cannot have any discovery or relief touching the matters and things aforesaid without the aid and assistance of this honorable court

court, where matters of account are properly cognizable and relievable, **TO THE END THEREFORE**, that the said M. T. and her confederates when discovered, may upon her and their corporal oaths, to the best of her and their remembrance, knowledge and belief, true, perfect and direct answer make to all and singular the things and matters aforesaid, as fully as if the same were herein again repeated, and they thereunto particularly interrogated, and more especially that the said M. T. may set forth whether the said farm of Ballyboggan, in county of Dublin, with the stone quarry, dwelling-house and lime-kiln thereon, were not purchased in partnership by your suppliant and her late husband the said W. T. and whether it was not agreed upon by your suppliant and said W. to conduct the business thereof in partnership, and to share equally and mutually the profits that should arise from the said partnership business, and whether it was not agreed upon between your suppliant and the said W. T. that a deed declaring said partnership should be drawn up and executed by your suppliant and said W. T. and whether in consequence of said agreement, such a deed or instrument was not drawn up or prepared by the late counsellor G. J. B. and whether the said instrument or deed of partnership so drawn up and prepared is not now in the possession of J. B. attorney at law, or of the said M. T. or in the possession of some other person or persons, and who by name was the said deed or instrument ever executed, and that the said M. T. may set forth whether the said W. T. her late husband, did not conduct the said partnership business of the said farm, quarry and lime-kiln of Ballyboggan, and did he not keep the books of account of said partnership business, and did he not from time to time, as the same accrued, dispose of the products of the said farm, quarry and lime-kiln of Ballyboggan, and whether he did not receive the payments that were made in the said farm, and of all the lime burned in the kiln thereon, and convert the money or produce arising therefrom to his own use, without accounting with your suppliant for the same or any part thereof, or how otherwise, did not the said W. T. consume and employ a great, or any, and what quantity of the lime and stone then belonging to the products of the said partnership concerns, at his the said W. T.'s distillery, what was the value of such stones and lime so consumed by the said W. T. at his said distillery,

and

and that the said M. may set out and discover in her answer to this your suppliant's bill, or in a schedule to be thereunto annexed, what quantity of lime was sold by said W. T. her late husband, to J. J. L. B. as likewise to K. L. B. and the respective times of selling or disposing of the same, as also a true and just account of all the debts which were due and owing to the said partnership, from all and every of the builders and other persons who used to be supplied with building materials, the products of the said partnership concerns, with the names of such respective builders and other persons, and the amount of the sums due by them respectively, as also an account of what quantity of lime and stone, the produce of the said partnership concerns was got or bought by P. and how he paid for the same, and to whom he made the payment; and that the said M. T. may in like manner set forth to the best of her knowledge and belief, all the debts of all sorts that now remain due to the said partnership business, and that the said M. may declare whether your suppliant did not make several advances of money, and to what particular amount, and when particularly to the said W. T. in his life-time, for and on account of the said partnership business, and did not your suppliant make several, or any, and what payments in discharge of the demands upon the said partnership, and to what particular amount in the whole, did not the said W. T. keep the accounts of the said partnership, and conduct the business thereof, and receive the issues and profits thereof from the commencement of said partnership till the time of his decease, did the said W. T. at any time, and when, during the said partnership, adjust or settle any account with your suppliant of the proceeds of the said partnership, did not the said W. T. die indebted to your suppliant in a large, or any, and what particular sum of money, upon the ground of the said partnership business, did not the said W. T. depart this life at or about the twenty second day of January, one thousand seven hundred ninety and one, or at any other, and what time, intestate, leaving the said M. his widow, or how otherwise, and did not the said M. thereupon obtain letters of administration to be granted to her out of the court herein before mentioned, or any other, and what ecclesiastical court in this kingdom, and by virtue thereof possess himself of all and singular the goods, chattels, rights, credits, effects and personal estate

estate of the said W. T. did not the said M. T. call in and receive not only the debts due to the said W. T. in his own particular right, but also several debts which were due and owing to the said partnership, which subsisted between him and your suppliant, and of which he the said T. was conducting manager as herein before set forth, or how otherwise, and that the said M. T. may particularly set forth and specify the amount of each particular partnership debt, and by whom due, and when, and by whom particularly received, and whether she did not upon the death of the said W. T. get into her possession the books of accounts belonging to the said partnership, and various letters, papers, documents, vouchers, receipts and other writings, by which the situation of the said partnership, and the profits arising therefrom might be clearly ascertained, and if she hath not the same in her possession, whether she knows if there be any such in the possession of any other person or persons, and whom by name, did not your suppliant after the death of the said W. T. and when, particularly pass and endorse unto the said M. T. any, and what bill of exchange, for the sum of seventy two pounds thirteen shillings and four pence, or any other, and what sum, was the said bill of exchange paid when due, did not the said M. T. keep the said bill of exchange in her possession for several, and what particular number of days, without resorting to your suppliant for payment thereof, did she give your suppliant the legal, or any, and what notice thereof, was not your suppliant, for the want of such notice from the said M. totally exonerated and exempted by the strict rules of law, or how otherwise, from the payment thereof, did not the said M. after your suppliant had been so exonerated from the payment of the said bill of exchange, send or return the same unto your suppliant, with the view, intent and for the purpose herein before particularly stated, or how otherwise, would your suppliant, when he was as aforesaid discharged from the payment thereof, have taken back or accepted of the said bill of exchange from the said M. but upon the terms herein before mentioned, and in confidence that your suppliant was only to allow or credit the said M. for the amount thereof, upon a settlement of accounts to be had between your suppliant and the said M. as administratrix of the said W. T. for and in respect of the aforesaid partnership business, did

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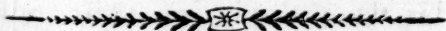
not

not the said M. take advantage of such your suppliant's confidence, and does she not now insist, contrary to justice, that your suppliant is now become liable to the payment of the said bill, without the said M. coming to any account with your suppliant touching the aforesaid partnership business, and hath she not for the purpose brought such action as herein before mentioned, or any other, and what action against your suppliant for the recovery of the amount of said bill of exchange, and is she not proceeding thereon to tryal, without having any regard to your suppliant's aforesaid just demands against her, or how otherwise, would not the said M. as administratrix of the said W. T. upon a just and fair settlement of accounts of said before stated partnership business, be found indebted unto your suppliant in the sum of six hundred pounds and upwards, or in any other, and what particular sum, did not your suppliant in manner aforesaid, or how otherwise, apply to the said M. to produce the books of account of said partnership business, and to come to a just and fair settlement with your suppliant on the foot thereof, and to pay to your suppliant what should upon such settlement appear to be justly due and owing to him by the said M. as aforesaid, and did not your suppliant propose and offer to allow the said M. the amount of the said bill of exchange upon the settlement of the said partnership accounts, or how otherwise, did not the said M. refuse or decline to comply with such your suppliant's reasonable applications and offers, and why, and for what particular reasons did she so refuse, and that the said M. may be obliged to come to a full, clear and true account with your suppliant, of the whole of the aforesaid partnership business which subsisted between your suppliant and him the said W. T. and that she may be obliged to pay to your suppliant whatever sum of money as may be found to be due to your suppliant upon the foot of such partnership account, and that the said M. after taking credit thereout for the amount of the said bill of exchange, and that the said M. T. may in the mean time, and until she has fully answered this your suppliant's bill, or your lordship's order to the contrary, may by the order or injunction of this honorable court, be restrained from proceeding at law against your suppliant for the amount of the said bill of exchange, and that she may be obliged to bring in and depofite with the proper officer of this honorable

honorable court all such books of accounts of the said partnership, together with all papers, writings, documents, vouchers and receipts, relative to; or in any wise concerning the said partnership, which in answer to this your suppliant's bill, she may acknowledge to have in her possession or power, and that your suppliant may have such further and other relief in the premises, as to your lordship shall seem proper, and as the nature and merits of this case may require, May it therefore please your lordship to grant unto your suppliant his majesty's most gracious writ of subpœna, to be directed to the said M. T. and her confederates, thereby requiring them and each of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in this honorable court, then and there true, full, perfect and distinct answer make to all and singular the premises, on their and each of their respective corporal oaths, to be by them severally taken on the holy Evangelists, and also his majesty's most gracious writ of injunction, to be directed to the said M. T. her counsellors, agents, attorneys and solicitors, thereby commanding them and each of them, to stop and surcease all proceedings at law against your suppliant, for all her said pretended demands in the premises, until the hearing of this cause before your lordship, or the further order of this honorable court, and also his majesty's most gracious writ of duces tecum or ducates vobiscum, directed to the said M. T. and her confederates, thereby requiring them and each of them, to bring in and deposite with the proper officer of this honorable court, all such books of account of the said partnership, together with all papers, writings, documents, vouchers and receipts relating to the premises, which she or they shall, in their answer to this your suppliant's bill, confess to be in their hands, power or custody, or in the hands, power or custody of any other person or persons, IN TRUST for them or any of them, and that the said confederates may stand to and abide such further order and decree as your lordship shall think fit to make for your suppliant's relief, and your suppliant will pray.

Bills in Exchequer.

Plaintiff being indebted to Defendants C. T. and B. T. by Judgment, Defendants issued a Custodiam, and got into Possession of the Rents of Plaintiff's Estate, Plaintiff files this Bill for an Account, charging that they were paid by Perception of the said Rents.



To the Rt. Hon. Chancellor, Treasurer, Lord Chief Baron, and the rest of the Barons of his Majesty's Court of Exchequer in Ireland.

HUMBLY complaining, sheweth, your suppliant and daily orator E. K. of Johnstown, in the county of Kildare, esquire, that in the year one thousand seven hundred and seventy one, your suppliant exhibited his bill in this court, to be relieved against a bond of three thousand pounds, conditioned for payment of one thousand five hundred pounds, which one B. L. of Dublin, spinster, alledged your suppliant had executed to her, but which bond was in fact forged or fabricated by said B. L. and her associates, the execution whereof, said B. nevertheless proved on a trial had at Waterford, in the year one thousand seven hundred and eighty one, by the fabricated testimony of a witness, which such witness, since said trial acknowledged, after which trial, your suppliant having dismissed his said bill in this court, he on the seventeenth day of July, one thousand seven hundred and eighty four, exhibited another bill for original relief against said bond, in the court of Chancery, on the hearing dismissed with full costs against your suppliant, the justice of which proceedings your suppliant doth in no sort controvert. That

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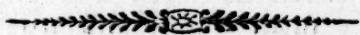
soon after said trial and judgment, pronounced on the verdict had thereon, a dispute arose between said B. L. and J. G. esquire, her then attorney, in consequence whereof, said judgment was under an order of the court of Common Pleas, assigned by said B. to H. G. esquire, then deputy prothonotary of said court, who afterwards caused your suppliant to be outlawed thereon, and obtained a grant in custodiam of the lands of Curraheen, Barnakill, Ballinthea and Kilgabriel, in the county of Waterford, of the clear value of five hundred and one pounds yearly, and which lands were the only estate whereof your suppliant was then seized, and said G. thereunder, in the year one thousand seven hundred and eighty one, by himself, and P. C. and J. W. whom he appointed his receivers, entered into the receipt of the full rents and profits of those lands, and continued therein till he assigned said custodiam and judgment to C. T. gent. with whom as is alledged, said B. L. afterwards intermarried, and said J. W. who was also attorney for said B. having afterwards been appointed a receiver under an order of this court, entered into receipt of the rents and profits of said lands, and continued in receipt thereof, and also in receipt of rents of other of your suppliant's estates after mentioned, under that authority, or under the authority of said H. G. B. L. or C. T. the alledged husband of said B. That your suppliant in May, one thousand seven hundred and eighty eight, on the death of his late brother C. K. esquire, succeeded to other estates in the counties of Waterford and Dublin, of the value of three thousand pounds a year or thereabouts, said B. L. or said G. her trustee, or said T. her alledged husband, obtained custodiams of these estates last mentioned, and by themselves and said W. their receiver, entered into receipt of the rents and profits of these lands, amounting yearly with said first mentioned lands, to three thousand five hundred pounds or thereabouts. That after all expectation of relief against said forged bond had been disappointed, by the dismissal of your suppliant's said bill in the court of Chancery, to wit, some time in the year one thousand seven hundred and ninety, your suppliant caused notice in writing, to be served on said B. L. and her said husband, and on said J. W. their attorney, requiring them to furnish your suppliant with an account of the sums so received by them, and of the balance claimed to be due on foot of said judgment and custodiam, and your suppliant thereby offered to
pay

pay down whatsoever balance should on a fair settlement appear due, which notice they severally disregarded, and continued in receipt of the rents and profits of all your suppliant's said estates, until the year one thousand seven hundred and ninety one, when your suppliant from a conviction that all money due on said judgment, supposing it fair, must have been paid with a great overplus, your suppliant again in that year called on them to account in the premises, which said T. who alone claimed to be entitled to said judgment, alledged he could not do, on pretence that he could not get said W.'s account, but said T. and said B. L. from a consciousness that nothing was due on foot of said judgment or proceedings, did not from thenceforth, take any proceedings on foot of said custodiams, or any of them, till April, one thousand seven hundred and ninety two, when they caused orders to be served on the tenants of your suppliant's estates, to pay their rents to said C. T. as assignee of said H. G. whereupon your suppliant again called on them severally to account with your suppliant, which they declined and refused to do, on a like pretence, that they could not prevail on said W. with them, but from a like consciousness of all demands on foot of said judgment being overpaid, they from thenceforth desisted from proceeding under said custodiams, till April, one thousand seven hundred and ninety three, when they caused orders for attachments to be served on several of your suppliant's said tenants for not having paid, and to compel them to pay their rents to said C. T. although said T. and the other confederates, are conscious, and so the truth is, that nothing remains due on foot of said custodiams or judgment, but that on the contrary, the same and all costs incident thereto, or occasioned thereby, have been discharged with a considerable overplus. That said C. T. and B. T. combining and confederating to and with the said H. G. J. W. and J. G. refuse to account with your suppliant for any of the rents received by them, under the authority of said custodiams, and on foot of said judgment, save only according to the value at which said lands were respectively extended, or the inquisitions grounded on said outlawry, which do not exceed ten pounds a year, or thereabouts, although said several lands, since the death of your suppliant's said brother, have produced yearly, three thousand five hundred pounds, and before that period, produced five hundred and one pounds, and declare they will continue in receipt of the rents

rents and profits, for the benefit of said C. T. and B. L. accountable only for the extended values thereof, which is manifestly unjust, and against equity, and your suppliant cannot have any adequate relief in the premises at common law, and is thereby rendered the less able to pay the debts he owes his majesty at the receipt of his said exchequer. TO THE END THEREFORE, that said defendants may in a schedule, set forth a just and true account of all monies received by them respectively out of said lands, under said custodiams or otherwise, distinguishing therein, the persons by whom and from whom particularly same was received, and at what times, and on account of what gale of rent, and out of what denomination of lands particularly same were received, and that it may be referred to the chief remembrancer or his deputy, to audite and state an account of the premises, as between your suppliant and said H. G. as assignee aforesaid, and said B. L. or said C. T. in her right, and that the said defendants, or such of them as shall appear liable thereto, may be decreed to pay your suppliant the balance which shall on such account be found due to your suppliant, and that defendants may be perpetually enjoined from proceeding further from, on foot of said custodiams or said judgment, at law against your suppliant or his said estates, your suppliant hereby offering, if contrary to your suppliant's belief in that behalf, any balance should be found to remain due to said B. L. or whomsoever shall in her right appear entitled to said judgment, forthwith to pay such balance, and that defendants may pending this cause, be enjoined from proceeding in any manner at law, to harraiss your suppliant and his tenants, under said custodiams, and that your suppliant may be further relieved in the premises according to equity and good conscience, and the nature and merits of your suppliant's case, and that the right honorable A. W. his majesty's attorney general, being served with a copy of this your suppliant's bill, as in such case is usual, may answer the same, and shew cause, if any he can, why a writ of amoveas manus should not issue to restore your suppliant to the possession of said lands, and to the perception of the rents thereof, notwithstanding said outlawry and custodiams, may it therefore please your lordships, &c. *Pray subpoena, letter missive, injunction and general relief.*

Joint

Bill for an Account of Rents of certain Premises, to which Plaintiff became Entitled under marriage Articles.



To the Rt. Hon. John, Lord Baron Fitzgibbon, Lord High Chancellor of Ireland.

HUMBLY complaining, shew unto your lordship, your suppliant and daily orator the rev. E. M. of Portobello, in the county of Dublin, esquire, that E. D. late of Deerpark, in the county of Clare, esquire, deceased, being possessed of several lands in the counties of Clare and Limerick hereafter mentioned, and a dwelling house in the city of Limerick, did by indented articles, bearing date the third day of April, one thousand seven hundred and sixty nine, made between P. and U. B. both of Portumna, in the county of Galway, esquires, and M. B. spinster, eldest daughter of the said P. of the first part, said E. D. then of Eyre-court, in the county of Galway, esquire, of the second part, and D. D. of Dunsandle, in the said county of Galway, esquire, of the third part, and the honorable F. C. of the city of Dublin, of the fourth part; in consideration of a marriage then intended, and afterwards had between the said E. D. and M. B. and of the sum of one thousand seven hundred pounds, marriage portion of the said M. B. vest the lands of Deerpark and Bunratty, situate in the barony of Tulla and county of Clare, and the lands of Doneer park, in the county of Limerick, and also the front stone house or messuage, then in the occupation of J. A. situate, lying and being in the middle ward, parish of Saint Mary, and city of Limerick, in the said D. D. and F. C. (the trustees in said articles named) their executors, administrators and assigns, to the use of himself the said E. D. for life, remainder to his first and other sons, the issue male of said marriage, remainder to him the said E. D. and his heirs, and in case the said M. B. should survive him the said E. D. without issue male, then said lands were

were to stand charged with a sum of two hundred pounds yearly, in the jointure of the said M. D. with power to the said E. D. to make leases of all or any part of said premises, for thirty one years or three lives in possession and not in reversion, as by said articles registered on or about the seventeenth day of May, 1769, now remaining of record, and to which your suppliant refers, may appear, your suppliant further sheweth, that by another settlement, bearing date the 9th of May, one thousand seven hundred and seventy four, and made on the intermarriage of your suppliant with his present wife M. E. D. only daughter of the said E. D. by his first wife, the said E. D. in consideration thereof, and for other considerations therein mentioned, vested the aforesaid lands in the counties Clare and Limerick, together with said house in the city of Limerick, in the hands of trustees therein named, to the use of him the said E. D. for life, remainder to the uses declared in the aforesaid settlement of the third day of April, one thousand seven hundred and sixty nine, remainder to your suppliant for life, remainder to his first and every other son, the issue of said marriage, subject to an annuity of one hundred pounds yearly to his then intended wife, the said M. E. D. in case she survived him, as by said articles now in your suppliant's hands, and registered the thirteenth day of May, one thousand seven hundred and seventy four, may at large appear, your suppliant further sheweth, that the said E. D. during his life-time, to wit; on the eighth day of October, one thousand seven hundred and eighty seven, demised said house and premises in the city of Limerick to P. V. of the said city, slator, one of the confederates hereafter named, by the description of ALL THAT AND THOSE the front and back houses wherein J. A. deceased lately lived, with the stable and back-yard thereunto belonging, bounded on the west with the cross lane leading from Exchange-lane, to the late J. S.'s back-yard at the back of said premises, on the east with the high street, on the south with the house of the late Mr. S. K. and on the north with the house of the said J. S. with the appurtenances in as ample manner as said J. A. held the same, situate in the parish of St. Mary, and city of Limerick, to hold to the said P. V. his executors, administrators and assigns, from the twenty ninth of September then last, at the yearly rent of thirty four pounds two shillings and six pence, as by said lease, had your suppliant the same to produce,

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would

would more fully appear, but which was registered the fifth day of July, one thousand seven hundred and eighty eight, as by a memorial of same, a true copy whereof is now in your suppliant's hands, appears, your suppliant further sheweth, that the said P. V. entered into possession of said house and premises, under said lease, and ever since has been in possession thereof, and paid the rents thereof to the said E. D. during his life time; your suppliant further sheweth unto your lordship, that the said E. D. departed this life about the first day of September, one thousand seven hundred and ninety, without issue, leaving the said M. D. his widow, who on his death entered into receipt of the rents of the lands, under her aforesaid settlement of the third day of April, one thousand seven hundred and sixty nine, but never intermeddled with any part of the rents of said house, situate in the city of Limerick; and your suppliant, on the death of said E. D. by letter and otherwise, applied to the said P. V. for the rent of said house, and to which your suppliant became entitled on the death of said E. D. under the aforesaid settlement of the ninth day of May, one thousand seven hundred and seventy four, but the said P. V. never returned your suppliant any answer to such his applications, till some time in the beginning of the present month of April, when he called upon your suppliant and informed him, that he had paid all rent due of said house to E. D. of in the county of Clare, esquire, a nephew of the said E. D. deceased, and who (as the said P. V. informed your suppliant) alledged to be entitled to said house and the rent thereof, under some pretended claim which he informed said P. V. he had to said house, as the said V. pretended or alledged to your suppliant, and the said V. also informed your suppliant, that the said E. D. gave him some article or writing, as an indemnity for his paying him said rent, and produced to him the said P. V. the counterpart of said lease so made to him by the said E. D. as aforesaid, but your suppliant shews, that if any such transactions ever took place between the said P. V. and E. D. the same were fraudulent and calculated to harrafs and distress your suppliant, the said E. D. well knowing he had no right to do so; whereupon your suppliant remonstrated with the said P. V. on the injustice of his proceedings, but the said P. V. positively told your suppliant, he never would pay him any rent for said house, unless your suppliant

pliant would allow him the pretended payments, which he alledged he made to the said E. D. which your suppliant would not do, well knowing as your suppliant charges, that the said E. D. had no right whatsoever to receive said rents, or in any manner to intermeddle therewith, and the said P. V. also threatened and declared unto your suppliant, that if he would in any manner proceed against him for the recovery of said rents, he would lock up said house, and leave it to go to ruin, and that he would not pay your suppliant the rent reserved by said lease so made to made to him by the said E. D. deceased, altho' the said P. V. knows, and is well convinced in his conscience of your suppliant's right and title thereto, and lately in a conversation had between him and your suppliant, in the presence of your suppliant's wife and others, the said P. V. acknowledged your suppliant to be the proper person entitled to same, but denied satisfying or paying him the rent for the reasons before mentioned; your suppliant further sheweth, that by the means of the said P. V. persisting in such his conduct, and by your suppliant's not having the counterpart of said lease of said house in Limerick, your suppliant was prevented from taking any proceedings for recovery of said rent, not knowing for what term the said lease was made, or what the yearly rent thereof was, till your suppliant caused search to be made, when he found that said P. V. had registered said lease as aforesaid; your suppliant further sheweth, that finding the said P. V. had no intention of settling with your suppliant for the rent of said house, your suppliant caused the said P. V. to be arrested for the sum of eighty five pounds six shillings and three pence, being the rent now due to your suppliant under the lease so made to him by the said E. D. hoping that the said P. V. would come into some settlement with your suppliant for the rent of said house, and allow your suppliant's title thereto, which he ought and is bound in justice to do. AND NOW SO IT IS, may it please your lordship, that the said P. V. and E. D. combining and confederating together, and to and with divers persons unknown to your suppliant, whose names when discovered, he prays leave to make parties hereto, the said P. V. absolutely refuses to come to any settlement with your suppliant, or to allow your suppliant's title to said house, or to pay him the rents thereof, and one while gives

gives out and pretends, that your suppliant is not entitled thereto, and now again that he never will pay him any rent for the same, though he acknowledged to your suppliant that he considered his right to said house and the rents thereof, as just and legal, in regard your suppliant hath not in his possession the counterpart of said lease, and at other times says he will continue to pay the rent of said house to the said E. D. in utter defiance of your suppliant's just claim thereto, though he well knows the said E. D. had no authority from your suppliant to intermeddle in any manner with said house, or to receive the rents thereof, your suppliant being the person entitled to the same since the death of the said E. D. ALL WHICH ACTINGS AND DOINGS of the said P. V. and said E. D. are contrary to equity, and tend to your suppliant's great oppression; *in tender consideration whereof*, and for that your suppliant under the aforesaid circumstances, is properly relievable in a court of equity, TO THE END THEREFORE, that the said P. V. and E. D. may upon their corporal oaths, to be by them taken on the holy Evangelists, true, full, perfect and distinct answers make to all and singular the premises, not only to their knowledge, but to their credible information, hearsay and belief, and may set forth whether the said E. D. being possessed as aforesaid, did or did not, by indented articles bearing date as aforesaid, or of any other, and what date, and made between the parties aforesaid, or any other, and whom, settle said lands in the counties of Clare and Limerick, and said house in the city of Limerick, to the uses in said settlement herein before particularly mentioned, charged and chargeable with the aforesaid yearly sum of two hundred pounds, as a provision or jointure for the said M. D. or how otherwise, and whether the said E. D. had not full power thereby to make leases of all or any part of said premises, for thirty one years or three lives, or for any other, and what term or time, or how otherwise, and whether said articles were not registered at time before mentioned, or at what other time, and whether by said settlement of the ninth of May, one thousand seven hundred and seventy four, made on the intermarriage of your suppliant with his present wife, the said E. D. deceased, did or did not vest said lands in the counties of Clare and Limerick, and said house in the city of Limerick, to the uses in said settlement, as herein before mentioned, subject to an annuity of one hundred pounds yearly, to, your
suppliant's

suppliant's wife, in case she survived him, or how otherwise, and had not the said E. D. full power and authority to execute such settlement, and was not said settlement registered at time herein before mentioned, or at any other, and what time, did not the said E. D. during his life-time, to wit, on the eighth day of October, one thousand seven hundred and eighty seven, demise to the said P. V. by the name of P. V. of the city of Limerick, slator, said house and premises in the city of Limerick, by the description of **ALL THAT AND THOSE**, the front and back houses wherein J. A. deceased, lately lived, with the stable and back-yard thereunto belonging, bounded on the west with the cross lane leading from Exchange-lane to the late J. S.'s back-yard, at the back of said premises, on the east with the high street, on the south with the house of the late Mr. S. K. and on the north with the house of the said Mr. J. S. or how otherwise described and bounded, **TO HOLD** to the said P. V. his executors, administrators and assigns, from the twenty ninth day of September then last past, for thirty one years, or for any other, and what term, at the yearly rent of thirty four pounds, two shillings and six pence, or at any other, and what rent, with the usual covenant, or any other, and what particular covenants, and was not said lease duly executed by the said E. D. and P. V. and witnessed by E. D. late of the said city of Limerick, grocer, but now of the town of Mallow, in the county of Cork, and J. H. of Mallow, innholder, or by any other, and what persons, and whom by name, was not said lease registered on the fifth day of July, one thousand seven hundred and eighty eight, or at any other, and what time, and is not the memorial thereof executed by the said P. V. and witnessed by said E. D. and J. H. or what other persons, and whom by name, and did not the said P. V. enter into possession of said house and premises, under said lease, and continue ever since in possession thereof, and pay the rents reserved by said lease to the said E. D. during his life-time, and to what particular period, and to whom since his decease, has the said P. V. paid said rent, and at what times, and to what particular period or gale day, and what sum is now due on account of such rent, and to whom is the same due, is not the same due to your suppliant under said settlement of the ninth of May, one thousand seven hundred and seventy four, as before stated, from the time of the death of the said E. D. or from what other particular time, did
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not the said E. D. die at the time herein before mentioned, or at any other, and what time, without issue, leaving said M. D. his widow, who on his death entered into execution of the rents of the aforesaid lands, in satisfaction of her jointure, under her settlement, did not the said M. D. forbear to intermeddle with any part of the rents of said house in the city of Limerick, and did not your suppliant on the death of said E. D. and often since, by letter and otherwise, apply to the said P. V. for the rents of said house, and did not the said P. V. decline paying said rent, and refuse giving your suppliant any answer to such his just application, until the time before mentioned, when he informed your suppliant that he had paid all rent due of said house to E. D. the nephew of the said E. D. deceased, did the said E. D. the nephew, give the said P. V. any, and what article or writing, as an indemnity for the said P. V.'s paying said rent, or produce to him the counterpart of said lease, so made as aforesaid, by the said E. D. to the said P. V. and if so, under what title or authority did he do so, and why, and for what cause or reason did the said P. V. demand, or the said E. D. consent or agree to give such indemnity, did not your suppliant inform the said P. V. of the injustice of his proceedings, and did he not thereupon tell your suppliant he would never pay him any rent for said house, unless your suppliant would allow him the payments which he alledged he made to the said E. D. the nephew of said E. D. deceased, and which your suppliant informed him he would not do, well knowing that the said E. D. had no right whatever, to receive said rents, or to intermeddle therewith, and did not the said P. V. also at the same time tell your suppliant, that if your suppliant would proceed against him for recovery of said rent, he would lock up said house, and leave it to go to ruin, though the said P. V. in a conversation between him and your suppliant, and in the presence of your suppliant's wife and others, acknowledged your suppliant to be the person entitled to receive the said rent, but denied satisfying or paying him the same, for the reasons before mentioned, and has not, your suppliant, by the said P. V.'s persisting in such conduct, and by not having the counterpart of said lease, been prevented ever since the death of said E. D. the elder, from taking any proceedings for recovery of said rent, for the reasons before stated, until your suppliant found said lease had been registered at time before mentioned,

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was not your suppliant, in consequence of the conduct of the said P. V. obliged to have the said P. V. arrested, in order to compel him to come to a settlement with your suppliant, for the rents of said house, and to allow your suppliant's right thereto, which he ought in justice long since to have done, without putting your suppliant to such adverse proceedings, has the said E. D. received any, and what rent, from the said P. V. and if so, to what amount, and to what period of time has he received the same, and and by what authority has he done so, has the said E. D. the counterpart of the said lease of the eighth day of October, one thousand seven hundred and eighty seven, in his possession, which was made by the said E. D. deceased, to the said P. V. and for what reason doth he detain the same, and under what colour of right, if not, does he know in whose custody or possession said lease now is, and what are the contents thereof; and that the said P. V. may be obliged to come to a just and fair account with your suppliant, touching the rent of said house, since the death of E. D. the lessor, and be obliged to pay your suppliant what shall appear due on such account, and also the rents payable in future out of said premises, as the same shall become due; and that the said E. D. or P. V. who threatens to evict your suppliant's interest in said house, and otherwise to harrahs and distress your suppliant, in whose custody soever said lease shall appear to be, may be obliged to depolite with the proper officer of this honorable court, the same, or the counterpart thereof, for your suppliant's benefit, to be disposed of on the hearing of this cause, as your lordship shall think fit, and set out in their answer to this your suppliant's bill, the said bond of indemnity, taken by the said P. V. in the words and figures thereof, and in the mean time, that the said E. D. may be restrained by the order or injunction of this court, from proceeding in any manner at law against your suppliant, touching your suppliant's title to said house, or the rents thereof, until he shall have fully answered this your suppliant's bill, or your lordship's further order to the contrary; and that this bill in all other respects, may be taken as a bill for the discovery of evidence against the said P. V. and in aid of the suit at law now depending against him, so as aforesaid instituted by your suppliant; and that your suppliant may be further and otherwise relieved in the premises, according as the nature and circumstances of his case shall require. May it therefore please

please your lordship, to grant unto your suppliant, his majesty's most gracious writ of subpoena, to be directed to the said P. V. and E. D. commanding and requiring them on a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in this honorable court, then and there, true, full, perfect and distinct answers make to all and singular the premises, not only to their knowledge, but to their credible hearfay and belief; as also his majesty's writ of injunction, to be directed to the said defendant E. D. requiring and commanding him to stop and surcease all proceedings relative to the calling in or collecting said rents, or in any manner intermeddling therewith, until he shall have fully answered this your suppliant's bill, or your lordship's further order to the contrary; as also his majesty's writ of duces tecum, requiring and commanding the said defendants, to bring in and deposite with the proper officer of this honorable court, all deeds, leases, papers and writings whatsoever, relative to the premises, in their or either of their hands, power or custody, and that the said defendants may stand to and abide such further order and decree as your lordship shall make in the premises for your suppliant's relief, and your suppliant will pray.



PLEAS *and* ANSWERS to BILLS *for an*
ACCOUNT.

The Defendant being a trustee for younger Children, Pleads in Bar to the Heir's Bill, to Account and Discover a former Decree of this Court, and two Reports of the Master, before whom his Accounts were stated, and Reported and Confirmed by Decree of this Court.

The Plea of R. F. one of the Defendants to the Bill of Complaint of W. H. an Infant, by F. C. Gent. his next Friend and Guardian Complainant.

THE said defendant by protection, not confessing or acknowledging all or any of the matters or things in the complainant's bill of complaint contained, to be true, in such sort, manner and form, as the same are therein and thereby set forth and alledged; the end of the complainant's bill being to call this defendant and J. H. the elder, the other defendant in the bill named, to an account, for their receipts and disbursements, relating to a trust of certain lands and tenements in the bill particularly mentioned, to be leased or granted by J. H. the complainant's father, to the said other defendant J. H. the elder, and to one D. B. and W. C. since dead, for a long term of years yet in being, IN TRUST for raising portions for E. H. since married to J. W. the younger, and for one H. H. (the said E. and H. H. being two of the younger children of the said J. H. the father) to be paid them at their ages of one and twenty years, or marriage, with interest for their maintenances, till their

portions were payable; charging that the said B. acted in the trust, and had assigned his interest to this defendant, and also that the said J. the father had before the said lease, upon good consideration, executed some deed, whereby he had settled all the premises to the use of the complainant and his heirs, in general or special tail, and praying a discovery and delivery to him of the said deed, and of all other deeds concerning the premises: this defendant for plea to the said bill of complaint, and all the matters and things therein contained, doth say, that in or about the term of St. Hilary, in the year of our Lord, one thousand, seven hundred and eighty six, the said J. W. the younger, and E. his wife, and the said H. H. then an infant, by his guardian complainant, exhibited their bill of complaint into this honorable court, against the now complainant, and the said J. W. the elder: and this defendant R. F. thereby setting forth, that the said J. H. the father being seized of divers lands and tenements, lying at S. and B. in the parish of H. in the county of W. (being the same lands and tenements in and by the now complainant's bill mentioned and intended) did, for provisions and portions for his younger children, make a lease thereof to the said B. J. W. the elder, and one W. C. for a long term of years yet in being, IN TRUST for the raising of five hundred pounds a piece, for the said E. and H. his children, viz. five hundred pounds for E. payable at her age of twenty one years, or marriage, and five hundred pounds for the said H. payable at his age of twenty one years, and interest for their maintenance, till their portions became payable, and that the said J. H. shortly after died, and B. assigned his trust in the premises to this defendant; and the said J. H. being dead, the estate in law was in the said J. W. the elder, and this defendant IN TRUST as aforesaid: and that the now complainant W. H. being heir at law to the estate, endeavoured with the trustees to defeat the deed of trust, and hinder the payment of the said portions; and they refused to pay the said E. her portion, which was due upon her marriage with interest, or to allow the said H. any thing for his maintenance and education: and therefore to compel the trustees to discover the deed of trust, and for relief in the premises, they the said then complainants craved the aid of this court, and process of subpœna against the defendants, to compel them to answer the bill: which being

being granted, and they therewith served, they appeared accordingly, and answered, the said then defendant and now complainant W. H. answering by his guardian especially assigned by this court; and he and this defendant by their answers setting forth, that the said J. H. the father, by his indenture of the fifteenth of November, one thousand seven hundred and seventy six, did demise to the said D. B. J. W. the elder, and W. C. the messuage and lands in the said deed mentioned, (being the same by the now complainant's bill intended) and worth about one hundred and forty pounds per annum, to have and to hold the same to them and their assigns from the feast of saint Michael next, before the date of the said indenture, for the term of five hundred years, upon trust that they, their executors and assigns, out of the rents and profits of the premises, should decently educate and breed up the now complainant W. H. and the said E. and H. H. with such convenient schooling, trade or trades, or otherwise, as they the said trustees should think fit and convenient, and above what sum or sums of money should be expended, about the educating and breeding the said children, should out of the rents and profits of the premises, and otherwise by letting or demise of the same to any person or persons, for any parcel and part of the said term, for fine or fines, with reservation of only a pepper-corn, or some small rent, raise and pay unto the said H. H. five hundred pounds, when he should attain his age of twenty one years, and to the said E. five hundred pounds for her portion, at her age of twenty one years, or day of marriage, which should first happen; as by the said indenture might appear. And that the said W. C. died soon after the making of the said deed, and J. W. the elder, had not intermeddled with the trust, but that the said B. had entered on the trust-lands, and for some time maintained the younger children; but being an ill husband, and insolvent, the now complainant was desirous to have the trust assigned by B. to this defendant, which was done accordingly, by indenture dated the sixteenth of August, one thousand seven hundred and eighty seven. And that this defendant had been at great charges and expences in maintaining the now complainant, and soliciting divers suits for him, and procuring B. to surrender, and in journies and taking possession, and otherwise, and was willing to join with the said J. W. the elder, in the execution of the trust, so he might be indemnified by the order of this court; and the now complainant W. H. being

being then near nineteen years of age, and a defendant to the said bill, submitted to the discretion of this court; and the said J. W. the elder, said he never acted in the trust, yet was ready to do any act the court should think fit, about the performance thereof; and all the defendants denied combination; and concluded their answers with the general traverse: as by the said bill and answers remaining on record in this honorable court, may appear. And on the tenth of December, one thousand seven hundred and eighty nine, the said cause coming to be heard, in presence of counsel learned on both sides; the substance of the bill and answers appearing to be, as is before recited; this court thereupon, and upon debate of the matter, and hearing counsel on both sides, did think fit, and so ordered and decreed, that the said J. W. the elder, and this defendant, should join in the execution of the trust, according to the said recited indenture; and in order thereunto, should receive as well the arrears of rent, as the growing rents and profits of the premises, and should educate and provide for the now complainant W. H. and the said H. H. according to the said indenture of trust, in such manner as one of the masters of this court should approve of, and should apply the residue of the said rents and profits towards the payment of the said five hundred pounds, due to the said E. at her day of marriage, with interest for the same, after the rate of six pounds per annum, for each one hundred pounds, together with the costs of this suit, to be taxed by the said master; and that the same might be more speedily raised, the said J. W. the elder, and this defendant, as soon as conveniently they could, should raise money by demising, setting, letting, or mortgaging the premises, or any part thereof, to such person or persons, for such part of the said term of five hundred years, as the said master should approve of, and should pay the same to the said J. W. the younger, and E. his wife; and when the said H. H. should come to twenty one years of age, the said J. W. the elder, and this defendant, were to raise and pay to him his five hundred pounds, out of the profits of the said estate, or by leasing or mortgaging the same; and they were by the said decree protected and saved harmless by the aid of this court, and to have all just allowances of monies by them, or either of them, expended and to be expended, in relation to the said trust, the same to be allowed by the said master; in pursuance of which order, the said master by his report, dated the second day of

of March then next made, after hearing on both sides, did think fit that this defendant should be allowed the sum of forty pounds per annum, for the maintenance and education of the now complainant W. H. and the sum of twenty pounds per annum, for the maintenance and education of the said H. H. according to the indenture of trust, out of the rents and profits of the premises, and the sum of thirty seven pounds, three shillings and four pence, for costs of the said suit; which report was afterwards by order of this court, upon hearing counsel on both sides, confirmed by the decree of this court. All which proceedings were afterwards drawn up into a decree, and duly signed and enrolled, as by the same remaining on record in this honorable court, may more fully and at large appear; and on the eighth of May last, upon the complainant's petition, complaining of the defendant's accounts then before the master, suggesting the same to be allowed by him; it was ordered upon the complainant's petition, that the said master should review his accounts; in pursuance of which decree and order of the eighth of May, the said master having considered of the matters thereby to him referred, and reviewed this defendant's accounts, did, by his report, dated the tenth of July last past, certify, that the defendant hath paid and disbursed for the now complainant, for his maintenance and education, and in money by this defendant expended in this and other suits in this court, touching the estate in question, with the monies paid to the said D. B. upon the assignment of his trust, and for divers journies into the country about the estate, from the twenty third of November, one thousand seven hundred and eighty six, to the twentieth of November, one thousand seven hundred and eighty seven, several sums, in the whole amounting to two hundred and twenty seven pounds, seventeen shillings and four pence. And the said master, by the same report, hath farther certified, that he had considered of the defendant's farther accounts, brought in before him, which this defendant had paid and disbursed for the maintenance of the now complainant, and of the said H. H. and for repairing of the premises, and taking several journies into the country to let the estate, and receiving the rents, and raising the portion of the said E. and for several law charges, and other allowances, and money lent to the now complainant, and paid for him for clothes and other necessaries, from the twenty third day of November, one thousand seven hundred and eighty

eighty seven, to the twenty fourth of June last past, the sum of three hundred and seven pounds, nineteen shillings and nine pence, in all five hundred and thirty five pounds, seventeen shillings and one penny. And that this defendant (being the only acting trustee touching the premises) had received out of the rents and profits of the premises, and by the said E.'s portion in the same time, the sum of three hundred and sixty eight pounds; which being deducted out of the five hundred and thirty five pounds, seventeen shillings and one penny, there remains due to this defendant the sum of one hundred and sixty seven pounds, seventeen shillings and one penny, which this defendant is to receive out of the rents and profits of the premises in question, according to the direction of the said order or hearing; as by the said report remaining filed with the register of this court, may also appear. Which report is also confirmed by the order and decree of this court; as by the same orders entered with the register of this court, may likewise appear. And this defendant averreth, that since the twenty fourth day of June last, he hath not received any rents or profits of the premises, or any part thereof, the same being stayed in the tenants hands by order of this court; and that in farther pursuance of the said decree, the master hath allowed of an assignment of the said lease and term of five hundred years, by way of mortgage, for raising of money to pay the portion and interest due to the said E. which assignment this defendant hath executed according to the master's direction, and pursuant to the said decree; wherefore, and for that the now complainant by his now bill of complaint, seeks to bring this defendant, who is only a trustee, to a new account for the receipts and disbursements, and to unravel his accounts, which have been already stated and settled by the decree of this court; which if the complainant should be permitted to do, this defendant will thereby be put to double charge and trouble in being drawn into several accounts for the same matters, after his accounts stated and settled; and for that the said H. H. and J. W. junior, and E. his wife, who have the like right to call this defendant to account, as the now complainant hath, are no parties to the now complainant's bill; whereby this defendant, if liable to a new account, may be again called to a further account by them, or any of them, and so doubly vexed for the same matters; and for that the now complainant might, if he had pleased, have controverted this defendants accounts

accounts before the said master, in the said former suit, wherein the said decree and proceedings were had and made; and for that the discovery of the pretended settlement, whereby the complainant pretended to be heir general, or in special tail, tends to destroy the said lease and term, and provision thereby made, as well for the said complainant as the said H. and E. and consequently to defeat the assignee or mortgagee of the premises (who is a purchaser, or in nature of a purchaser, for a valuable consideration, and no party to the complainant's bill) of his money; this defendant therefore pleads the said decree, proceedings, and matters aforesaid, in bar, of the now complainant's bill, and of the account and discovery thereby prayed, and humbly demands the judgment of this honorable court, and rests and abides therein, whether he shall be compelled to make any further or other answer to the now complainant's bill, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.



The joint and several Answers of J. W. Sen. the other Trustee, and J. W. Jun. Husband of E. the Complainant's Sister.

THE said defendants saving and reserving to themselves, now and at all times hereafter, all and all manner of advantages and benefit of exception to the many untruths, uncertainties, insufficiencies and imperfections in the complainant's bill of complaint contained, for a full and perfect answer thereunto, or to such part thereof, or so far as it materially concerns these defendants, or either of them, to make answer unto; they severally answer and say, and first the defendant J. W. the elder, for himself severally answering saith, that J. H. late father of the complainant, was in his life-time possessed of certain lands, tenements and hereditaments, in G. and E. in the parish of H. in the county of W. of the yearly value of one hundred and eighty two pounds, or thereabouts, and not two hundred pounds and upwards, as the complainant in and by his said bill of complaint hath vainly suggested. And this defendant farther answering saith, that the said J. H. the complainant's late father, being in his life-time a man given to much drinking, and easy to be led away by ill company; some friends of the said J. H. knowing that he the said J. had a power to make a settlement of the said premises, having compassion on his younger children, of which number the complainant was one, prevailed with him to settle his estate in trust, so that there might be some provision made for the younger children of him the said J. H. And thereupon he the said J. H. did, as in the bill is mentioned, execute a deed of demise of the premises, for a long term of years then to come and yet unexpired, to D. B. one other of the defendants in the complainant's bill of complaint mentioned, and W. C. deceased, for raising five hundred pounds apiece for the younger children of the said J. payable to them at their respective ages of twenty one years, or day of marriage, of E. H. the complainant's sister, as in and by the complainant's bill of complaint is mentioned; but the said J. W. the elder, utterly denies he ever insinuated

ated himself with the said J. H. or used any indirect means for procuring of such deed of settlement or demise; neither did this defendant at the same time, or any time before or after, know that the said lands and premises, were by several deeds and conveyances so settled, that the complainant's father had no power by law to make such settlement or lease, as aforesaid, as the complainant in and by his said bill of complaint hath most untruly and falsely suggested; and this defendant further answering, saith, that he believes it to be true, that J. H. the complainant's father, and R. H. the complainant's elder brother, are both dead, and that the sole and undoubted right to the premises may be vested in the complainant, upon his discharging the incumbrances charged thereupon, by the said J. H. his father, in his life-time, and all other incumbrances, created by law-suits since his death; but this defendant utterly denies that he ever intermeddled as the only acting trustee, or received any of the rents, or made any benefit of the premises in question, since the death of the said J. H. or that he hath any ways wronged or defrauded the complainant, or made away with, cancelled or defaced, or ever knew of, or hath in his custody, or knows how to come at any such deed or writing, which the complainant in his bill of complaint vainly, and without any manner of ground pretends would bar his father's deed of trust, and fix the inheritance of the premises in question in himself, and clear him from paying his brother and sister's portions, and discharge the other incumbrances upon the said estate; neither doth this defendant believe that there was ever any such deed or writing, that would bar or affect the trust, had not the same been confirmed by the decree of this honorable court, signed and enrolled; the which this defendant is advised he might have pleaded to the complainant's now bill of complaint, and humbly hopes and conceives he shall reap as much benefit thereby, as if he had pleaded the same. And the said defendant farther answering, saith, that he believes it to be true, that the defendant B. might assign his trust to the other defendant F. about the time in the bill, and that there might be such proceedings in this honorable court, as in and by the complainant's bill of complaint is for that purpose set forth; but this defendant utterly denies that he knows what money the defendant F. paid to B. for such assignment of his trust, or in what capacity or condition the said defendant F. was in at that time. And the defendant J. W.

the younger, for himself severally answering, saith, that true it is, that he did intermarry with, and take to wife E. the complainant's sister, at which time he this said defendant might have had a greater fortune, having fifty pounds per annum, good land of inheritance, notwithstanding the complainant in his bill of complaint most untruly suggested, that this defendant was a man of no fortune. And this defendant further answering, saith, that he hath received as a portion with the said E. his wife, the sum of five hundred and fifty eight pounds, and no more, being part of the sum of six hundred pounds, procured by the defendant F. who is the only acting trustee, as this defendant hath been informed, and verily believes to be true. And also, that the said defendant F. did raise the same by way of mortgage upon part of the entrusted estate, pursuant to the decree of this honorable court. And this defendant craves a further allowance of forty two pounds, remaining yet due to him of his said wife's portion, there being due to her at the time of his intermarriage with her, for principal and interest, the just sum of six hundred pounds, the which this defendant, under the favor of this honorable court, conceives to be his right. And the said defendant further answering, saith, that he knows nothing concerning any such deeds or writings, as in the complainant's said bill of complaint is mentioned, or how the said complainant's father came to settle the said estate in trust, or how he was seized or possessed of the same, being altogether a stranger thereunto; but refers himself to the several answers of the several other defendants in the said complainant's bill of complaint named. And the said defendant J. W. the elder, for himself further saith, that he never intermeddled with the trust, or received any of the rents since the defendant B.'s assignment of the same to the defendant F. but left the same to F. who was the plaintiff's guardian, and the only acting trustee. Neither hath this defendant at any time advantaged himself one penny by the estate; but on the contrary, this defendant doth aver that he is some hundreds of pounds the worse for his kindness to the complainant, and the securing the estate from going from him; the which the complainant ought to have been sensible of, and not to have vexed this defendant with this vexatious suit; all which this defendant well hopes this honorable court will in due time take notice of. And both these defendants deny all, and all manner of combination with the other defendant, or any other

PLEAS and ANSWERS.

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other person or persons whatsoever, with an intent to defeat and defraud the complainant, as in the complainant's bill of complaint is untruly suggested. Without that, that any other matter or thing, in the complainant's bill of complaint contained, material for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which these defendants are ready to aver, maintain and prove, as this honorable court shall award; and pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully and unjustly sustained.



Two Infants by their Guardian, exhibit a Bill against the Executors of the Testator their Father, to which Bill the surviving Executor Answers as followeth.

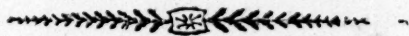
THIS defendant saving and reserving to himself all advantages of exception to the uncertainties, insufficiencies and imperfection, of the complainant's said bill of complaint, now and at all times hereafter, saved and reserved unto this defendant; for answer thereunto, or so much thereof as he this defendant is advised is any ways material for him this defendant to make answer unto, doth answer and say, that he believes it to be true, that J. W. the complainant's father in the bill named, was in his life-time and at the time of his death, possessed and interested of and in a very considerable estate, but of what certain value or the particulars thereof this defendant knoweth not, nor can he set forth the same from hearsay or belief. And that at the same time, for that purpose mentioned in the bill, he the said J. W. did make his last will and testament in writing, as in and by the said bill is set forth, or to that effect, save that by the said will the said J. W. did order, appoint and declare, that it was his mind and true meaning, that his executors should with the advice and approbation of his overseers, or the survivors of them, put out and lend to some company, guild or fraternity in Dublin, or lay out in buying of leases for years, or upon mortgage, or to able persons, upon good security, his childrens portions for bettering of the same, and maintaining and educating his said children, wherein he desired their utmost care, in which clause in the said will there are no such words (*and not otherwise*) as the bill suggests; and farther, in and by the said will he did desire and appoint, that his executors should twice yearly meet with his overseers, make up and perfect a plain and full account and manifestation in writing to and with the said overseers, of, for and concerning all such monies, debts, payments, receipts, disbursements, and all other things touching his estate, or any way concerning or relating unto the execution of his will, fit and needful to be inserted therein, a copy of every of which account and manifestation to be fairly written and subscribed by his executors, and delivered to his overseers, to
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the intent in the said bill mentioned ; as by the said will, proved in the prerogative court of this kingdom, more at large appeareth, and to which this defendant for more certainty referreth himself. And this defendant farther saith, that about the time mentioned in the bill, the said J. W. died possessed of a great personal estate, consisting as he believes, of such things as are particularly mentioned in the bill, but of what particular value this defendant knoweth not. And this defendant saith, he believeth it to be true, that the said testator J. W. was at the time of his death seized of such real estate as he took upon him to devise in and by his said will, but this defendant knoweth of no other real estate that the said J. W. had. And this defendant farther saith, that he, together with the said T. W. and P. W. did prove the said will in due form of law, as he this defendant is advised and believes, and jointly took upon them the execution thereof. But this defendant saith, that the said P. W. as this defendant believes, was the chief acting executor, and took upon him the sole management of the said J. W.'s personal estate ; for this defendant saith, he, or any for him, never possessed himself of any part of the estate of the said testator J. W. other than to receive the rents and profits of the houses in Back-lane, a great part whereof he expended about maintaining and educating the children of the said testator ; and other part thereof in building and repairing of the same houses and other money paid to the said P. W. to be employed in the management of the said testator's estate, and in other things relating to the government of the said estate. And this defendant saith, according to the direction of the said will, he did several times make up his accounts in writing, and deliver them to the overseers of the said will, and which accounts so delivered by this defendant in as aforesaid, he avers were true and just accounts of all his actings and dealings, and of all his receipts and payments, with or in relation to the personal or other estate of the said J. W. But this defendant having no copies of such accounts, he cannot now set forth the particulars thereof, but refers himself to them when they shall be produced, being, as this defendant believes, in the hands of the said overseers, or some of them, and where the complainants may have access to them, or copies of them, if they please, as this defendant also believeth ; and this defendant cannot give the complainants any further account or answer touching the said executorship, other than those delivered to the said

said overseers, as aforesaid, and other than the account hereafter set forth, to wit, that the last account which this defendant made up with and delivered to the said overseers, as aforesaid, ending the eighth of March, one thousand seven hundred and seventy two, he this defendant hath annexed to this his answer, a schedule of all his receipts and payments since that time, which schedule this defendant prays may be taken as part of his answer, for that he avers the same to be true, and contains a true and perfect account of all such monies as he, or any for him, or to his use since the time aforesaid, have, or hath had, raised or received out of the estate of the said J. W. and of what monies this defendant hath since that time paid or disbursed, as he was one of the executors of the said J. W. And this defendant avers, he hath paid and disbursed the respective sums mentioned in the said schedule, as is therein set forth; and farther or other account or answer touching the intermeddling in the said executorship, or of his receipts or payments, he this defendant cannot give than as aforesaid, and is herein after set forth. And this defendant denies he ever took any gratuity to lend any part of the monies belonging to the said testator's estate, either upon good or bad security, nor did this defendant ever consent to the lending any sum of money, part of the said estate, upon a security to any person or persons, that he believed or supposed to be otherwise than good. And this defendant denies that he ever put out any monies, or had any monies to put out of the said estate, other than such he hath charged himself with in the said accompts; but says it is true that some monies of the said estate was lent out to the said P. W. deceased, which were taken in the names of him the said P. W. and J. W. and this defendant more particularly remembereth, to one J. G. citizen and vintner of Dublin, two hundred and fifty pounds; and upon a mortgage of a lease of a house in the parish of St. Bridget, Dublin, dated the tenth of July, one thousand seven hundred and seventy one, and one hundred pounds more to the said J. G. upon another mortgage, dated the twenty eighth of June, in the year of our Lord, one thousand seven hundred and seventy two, of a lease of three messuages in College-green, as in and by the said several mortgages more at large appear, whereunto this defendant referreth himself. And this defendant denies he put out the said several sums of two hundred and fifty pounds, and one hundred pounds, or any part thereof; but

but believes that the said P. W. paid the said monies unto the said J. G. himself, and that he did the same by the advice and with the consent of T. M. one of the overseers, for that he the said P. W. informed this defendant so much, which made this defendant more willing to be a party to the said several mortgages; which debts this defendant doth fear may since become desperate, the said J. G. absconding himself, and as this defendant hath heard, is become insolvent. And that the said J. G. hath made several prior titles to some persons unknown to this defendant, of the said premises so mortgaged by him, as aforesaid; and this defendant conceives he is unconcerned therein, for that he was not otherwise concerned in the lending the said money to the said G. than as aforesaid; and the said P. W. who chiefly (if not solely) managed the said J. W.'s estate, lent and paid the said monies to the said G. as aforesaid. And this defendant denies he ever threatened or intended to take the principal monies in the bill, or any part thereof, out of the East-India company, as untruly suggested by the said complainant; but on the contrary, is willing to consent to any order or decree that this court shall think fit to make, for the barring and hindering as well this defendant, as the other defendants from meddling with the same. And this defendant farther saith, that he believeth it to be true, that the said P. W. about that time for that purpose mentioned in the bill, made his last will and testament in writing, as by the said bill is set forth, and therefore made this defendant and the other defendants, Mr. W. and Mr. M. executors; and this defendant, after the said P. W.'s death, joined with them in the probate of the said will, in the said prerogative court, as by the same there remaining, more at large appeareth; and he also saith, that it may be true, that the said P. W. died possessed and seized of a considerable personal and real estate, but knows not of what value, for that this defendant never possessed himself of any part thereof, or intermeddled therewith, or in the said executorship, farther than in the joining in the probate of the said P. W.'s will, as aforesaid. And this defendant says, that several times the said P. W. when he had received monies, would leave it at this defendant's house, in bags unsealed, and sometimes, and for the most part sealed up, but what sums and how often, this defendant cannot remember. And this defendant farther saith, that the said P. W. sent for and received all such sums from this defendant

dant, he this defendant never keeping any account of such monies, but only laid them by sealed or unsealed for the said P. as aforesaid; and that the said P. never deposited any monies in this defendants hands for any other trust, or for any other account, than he this defendant hath hereby set forth, and which the said P. received back from this defendant in his life-time. And this defendant denies that he ever, to his remembrance, borrowed any money of the said P. but on the contrary, often lent or paid several sums of money particularly mentioned in his this defendant's accounts; and sure this defendant is, that he was not in any sort indebted to the said P. W. at the time of his death. And this defendant denies, that he hath in his hands or custody, any other writings concerning the said estates, or either of them, other than the said mortgage made by the said G. which he is ready to produce, as this honorable court shall direct. And this defendant denies all combination charged in the bill, either with the other defendants, or any other person or persons whatsoever, to wrong or injure the complainant; and saith, that if any loss touching G.'s mortgage happened upon the mismanagement of the estate of the said J. the same was occasioned or happened so to be, by the said P. and not by this defendant. And the said P. hath, as this defendant believes, by his will, and the bequests therein to the complainants, fully reprized him for all such losses or damages. Without that, that any other matter or thing in the complainant's said bill of complaint contained, material or effectual in the law, for this defendant to make answer unto, and is not herein or hereby traversed or denied, confessed or avoided, is true. All which this defendant is ready to aver, &c.



The Defendant pleads a Stated Account, and an Acquittance in full in Bar to the Complainant's Bill.

BY protestation, &c. not confessing, &c. as to such part of the complainant's bill, as prays an account of and concerning any matters and things done and transacted between the complainant and this defendant, at any time before and unto the first day of April, which was in the year of our Lord, one thousand seven hundred and eighty six. And as to all such other part of the said bill as is not herein after answered unto, this defendant for plea saith, that upon the said first day of April, one thousand seven hundred and eighty six, the complainant and this defendant did make up, state and settle an account in writing then delivered to the complainant, of all sums of money this defendant had before that time by the order and direction, and for the use of the said complainant received, and of all matters and things thereunto relating, or at any time before the said first day of April, one thousand seven hundred and eighty six, being or depending between the complainant and this defendant; and the complainant after a strict and serious examination of the said account, and every particular therein contained, did approve and allow of the said account, and did actually receive of this defendant, the sum of two hundred and thirty three pounds, seventeen shillings and nine pence, being the ballance of the said account; and thereupon the same first day of April, one thousand seven hundred and eighty six, aforesaid, the complainant did give to this defendant a receipt or acquittance for the same, under his hand, in full of all accounts, [viz. recite the acquittance] as in and by the said acquittance, under the hand of the complainant, ready to be produced to this honorable court, may appear. And this defendant doth plead the said account settled and stated, the payment of the said monies, and the said receipt or acquittance, in bar, to such part of the said bill as demands an account from this defendant, for any matters or things in the bill mentioned, on or before the said first day of April, one thousand seven hundred and eighty six. And humbly demands the judgment of this honorable court, whether he shall make any other, or further answer thereunto.

The several Answer of T. H. of the City of Dublin, Esq; to the amended Bill of Complaint of W. W. of the City of Dublin, Gent. and H. W. a Minor, by the said W. her Father and next Friend, Complainants.

THIS defendant saving and reserving, &c. answering saith, he believes and admits that the complainant in the name of himself, and of the said H. his daughter, did on or about the 6th day of April, one thousand seven hundred and eighty five, file such original bill in this cause, as in the complainant's said amended bill is mentioned, to which original bill this defendant did on or about the twenty fifth day of November, one thousand seven hundred and eighty five, put in his answer; this defendant further answering, saith, he admits that G. H. in bill named, before his death, duly made and published his last will and testament in writing, bearing date the second day of September, in the year one thousand seven hundred and sixty seven, and also saith, he admits that F. H. in bill mentioned, died soon after her father, to wit, in or about the month of April, in the year one thousand seven hundred and seventy, as this defendant best recollects and believes, a minor and unmarried; this defendant further answering, denies that soon, or at any time after the intermarriage of the complainant W. with his late wife H. in the complainant's bill named, this defendant pretended that it was not convenient for him then to settle with the complainant W. upon the foot of the fortune of the said H. or that he this defendant, under any such, or any other pretence, agreed to answer the then occasions of the complainant W. or to advance him a sum of one hundred pounds, or that the complainant W. was to pay or to repay the same to this defendant, either upon his the complainant's, or this defendant's receiving so much of the said H.'s fortune, or that the same was or was not to be payable with interest, or that in pursuance of such alledged agreement, or of any agreement between the complainant W. and this defendant, such bond or Kerry bill as in the complainants bill is mentioned, or any other bond or Kerry bill, was filled up ready to be executed by the complainant W.

but

but this defendant sayeth that the complainant W. soon after his intermarriage with the said H. did, without any previous agreement whatsoever, between the complainant W. and this defendant, apply to this defendant to advance or lend unto him the complainant W. the sum of one hundred pounds, upon the security, or some other such security as in the bill mentioned, which this defendant absolutely declined, or refused to do, inasmuch as this defendant had not in his hands any money whatsoever, to which the complainant W. was or could be entitled in right of his said late wife, or otherwise, but on the contrary was considerably in advance or out of pocket on account thereof, and not being able then to ascertain whether the complainant W. ever would be entitled to receive from this defendant any sum of money whatsoever on account thereof; this defendant saith he cannot from his knowledge, credible hearsay, recollection or belief, set forth whether a bond or Kerry bill, of the import in the complainant's bill mentioned, or any such like import, was filled up ready to be duly executed by the complainant W. but if any such bond or Kerry bill was prepared or filled up by the complainant W. the same was so prepared or filled up without the knowledge of this defendant, or any previous agreement whatsoever, between the complainant W. and this defendant, for the filling up the same, or for advancing to the complainant W. the sum of money in the complainant's bill for that purpose mentioned, or any other sum of money whatsoever; and he this defendant absolutely denies that he this defendant alledged, or that the truth or fact was or is, that he this defendant had not the whole sum of one hundred pounds then ready to advance, or that therefore, or for any such reason, or upon any such account as in the complainant's bill is mentioned; this defendant did, on or about the sixth day of September, one thousand, seven hundred and eighty one, or at any other time, agree to advance to the complainant W. a sum of thirty four pounds, two shillings and six pence, in the complainant's bill mentioned, or any other sum of money whatsoever; but this defendant saith that the complainant W. either from a concertation that he had not any right to call upon this defendant for any sum of money whatsoever, or finding or well knowing that this defendant would not lend or advance the complainant W. any sum of money whatsoever, upon the security, or upon the account in the complainant's bill mentioned, on or about the

the sixth day of September, one thousand seven hundred and eighty one, did apply to this defendant and request this defendant to lend unto him, the complainant W. the sum of thirty four pounds, two shillings and six pence, which he promised and assured this defendant he would repay unto this defendant, or his order upon demand; whereupon this defendant, merely to serve, assist, and oblige the complainant W. who was then married to this defendant's sister, did comply with the complainant W.'s said request, and did accordingly lend and pay unto the complainant W. the sum of thirty four pounds, two shillings and six pence, and in order to secure the repayment thereof unto this defendant, he the complainant did perfect unto this defendant a promissory note, bearing date on or about the sixth day of September, one thousand seven hundred and eighty one, by which he promised to pay unto this defendant, or his order on demand, the sum of thirty four pounds, two shillings and six pence, and the complainant W. did, in some short time afterwards, that is to say, on or about the twenty fifth day of October, in the year one thousand seven hundred and eighty one, apply to this defendant, and request of him to lend unto complainant W. a farther sum of forty five pounds, ten shillings; with which application and request of the complainant W. this defendant actuated by the same motives which induced this defendant to lend unto the complainant W. the said first mentioned sum of thirty four pounds, two shillings and six pence, did comply with; this defendant did accordingly lend unto the complainant W. the farther sum of forty five pounds, ten shillings; for securing the repayment whereof unto this defendant, he the complainant W. did perfect unto this defendant his promissory note for the said sum of forty five pounds, ten shillings, bearing date the said twenty fifth day of October, one thousand seven hundred and eighty one, and payable to this defendant, or his order on demand: this defendant absolutely denies, that the truth or fact really was or is, that at the time the complainant W. passed the said two notes, or at any time, it was agreed upon between this defendant and the complainant W. that as soon as this defendant should settle with the complainant, on account of his wife's fortune, that the said notes should be given up or taken by the complainant, as payment of so much of the said fortune, or that whatever sum over and above the amount of the said notes should appear due to the complainant, should be paid over to him
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by this defendant; or that he this defendant, at the time of taking the said notes, or at any time well or at all know that on a settlement of accounts, or otherwise, this defendant would or will appear indebted to the complainant W. in a considerable, or any sum of money whatsoever, over and above the sums in the said two notes mentioned, or otherwise; on the contrary this defendant saith, that the complainant W. now stands justly indebted unto this defendant, in the amount of the said two promissory notes, and the interest thereof, and the costs of proceeding for the recovery thereof, over and above all just allowances, and over and above all sums of money which came to the hands of this defendant, as executor or trustee named in the wills of G. H. and R. A. respectively, in the complainant's bill named, upon which or under which complainant W. founds his claim against this defendant; and on account whereof, there was due to this defendant, as executor and trustee as aforesaid, at time of filing this defendant's answer to the complainant's original bill in this cause, a sum or of five hundred pounds, and upwards, and on which balance account there now remains justly due and owing to this defendant, a considerable balance or sum of money, over and above all just allowances, as this defendant verily believes; and therefore this defendant denies that on this defendant's coming to settle accounts with the complainant W. as in the bill mentioned, a considerable, or any sum, would or could appear to be coming to complainant W. as representative of H. his late wife, over and above the sums in said two notes mentioned. This defendant further answering, admits that he gives out, as he verily believes the truth and fact to be, that the house in William-street, in the city of Dublin, in which the said R. A. formerly lived, was settled on the said R. A.'s wife, by some deed executed by the said R. in his life-time, and saith he hath heard, and verily believes, that such deed was duly executed by the said R. A. and registered in the public register office in the city of Dublin, and that the same is in the hands, custody or power of the defendant J. A. late the wife, and now the widow of the said R. A. but as to the date, import, and contents of the said deed, this defendant cannot, from knowledge, hearsay or belief, set forth the same, and therefore this defendant humbly craves leave to refer to the answer of the said J. A. to the complainant's bill in this cause, relative thereto. This defendant further answering, admits that he this defendant claims an allowance
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for such sums as he this defendant paid or allowed to D. T. in the complainant's bill named, who is also a defendant in this cause, and is married to a sister of the complainant's late wife, and of this defendant, and who was employed by this defendant as an agent or receiver in the country; and this defendant is advised, and humbly apprehends, but herein submits to the judgment of this honorable court, that he this defendant had a good right, and was well warranted in employing and paying an agent or receiver to transact the business, and receive the rents in the country, which under the trusts of the wills of the said G. H. and R. A. respectively, remained to be transacted and received by this defendant; who, for the reasons mentioned in this defendant's answer to the complainant's original bill in this cause, was and is totally incapacitated from transacting the same, or attending thereto, and which was well known to the testators respectively, at and previous to the respective times of appointing this defendant to the said several trusts; and this defendant saith, that to the best of this defendant's recollection and belief. the said D. T. was so employed, with the knowledge, privity and consent of all or most of the persons interested, and of the complainant's said late wife in her life-time; nor did the complainant W. to the knowledge, recollection or belief of this defendant, at any time whilst the said D. T. was employed in transacting the said business, and receiving such rents, and otherwise rendering his services for the benefit and advantage of the estate and effects of the said G. H. and R. A. respectively, nor until the complainant found by the defendant's answer to the said original bill, that the said D. T. was paid or allowed by this defendant for his said services out of the estate or effects of the said testators respectively, intimate to this defendant, or otherwise, express any disapprobation or dissatisfaction at this defendant's employing the said D. T. altho' the complainant well knows, as this defendant verily believes at and previous to the time of his intermarriage with his said late wife, and hath even since known, that the said D. T. was so employed in the transacting and managing of the said business and the receipts of the said rents, and this defendant denies, that the sums paid or allowed to the said D. T. by this defendant, or any of them, or any part thereof, are or is a fabricated charge, or ought not to be allowed for the reasons in the complainant's bill mentioned or for any other reason, as

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this defendant is advised and humbly apprehends and submits to the judgment of this honorable court; this defendant admits, that he this defendant did not, until after the filing of the complainant's original bill, claim any allowance for the sums paid or allowed to the said D. T. as aforesaid; nor did this defendant ever pretend that he paid the same, until after the time of filing the said bill, inasmuch as this defendant did not, until after the filing the said bill and previous to this defendant's answering the same, settle the accounts of the said D. T. wherein this defendant made the said allowances to the said D. T. altho' this defendant had long, previous to the time of filing the said bill, in part made the said several allowances to the said D. T. by permitting him to retain the amount thereof in his hands as a compensation for his said services; and this defendant saith, that he this defendant did all along from the time he this defendant did first employ the said D. T. in the transaction of such business, intend to render to the said D. T. and that the said D. T. did as this defendant believes, also expect to receive from this defendant payment or satisfaction for his said services, considerably exceeding what this defendant paid or allowed him for the same; this defendant denies that he this defendant, otherwise than as mentioned in this defendant's answer to the complainant's original bill, permitted R. W. in the bill named, who was one of the tenants of the lands of Kilmorebrannagh, in the county of Kildare, to run in arrear of rent to the amount in bill mentioned, or any other amount; or that he this defendant, otherwise than as mentioned in this defendant's said answer, took upon himself, without the privity or consent of any of the persons interested, or particularly without the consent of the complainant's said late wife in her life-time, or of the complainant, to accept of a surrender of the said W.'s lease on the said lands, and to forgive him all the said arrear of rent, but this defendant admits, that he this defendant did, for the reasons and upon the occasion in this defendant's said answer to the complainant's said original bill mentioned, with the knowledge, privity, consent and approbation of the several persons in this defendant's said answer for that purpose also mentioned, and not otherwise accept of a surrender of the said W.'s lease, and remit or release to him the said arrear of rent in bill mentioned; and that he this defendant alledges and

and humbly hopes this honorable court will be of opinion, that the defendant ought not to be accountable for the said arrear in bill mentioned, or any part thereof; this defendant denies, that the truth or fact really was or is, that the said arrear in bill mentioned or any part thereof, was suffered to accrue due by or thro' the default or negligence of this defendant, on the contrary, this defendant saith, that he this defendant used every means in his power to prevent the same, this defendant denies that he this defendant took upon himself, without the permission or consent of the residuary legatees named in the will of the said R. A. to make a compliment or present to the widow of said R. of several articles of household furniture or plate, to the amount in bill mentioned, or any other amount, or that the same or any part thereof was or were so or at all given by this defendant, without the consent or expressly or at all against the will or desire of the complainant's said late wife; but this defendant admits, that he this defendant, for the reasons in this defendant's said answer to the complainant's original bill mentioned, did at the instance and by and with the consent and direction of the said residuary legatees of the said R. A. and amongst them of the complainant's said late wife, shortly after the death of the said R. A. make a present or compliment to the defendant J. A. the widow of the said R. A. of several articles of household furniture and plate, which remained in the said R. A.'s dwelling house in William-street, in the city of Dublin, at the time of his death, but the value of such furniture and plate, or any part thereof was, or of what particulars the same consisted, this defendant cannot from his knowledge, credible hearsay or belief, set forth, otherwise or at all save that this defendant believes, the same were of very inconsiderable value; and this defendant saith, he did not take any account, schedule or inventory thereof, and therefore this defendant cannot more fully or otherwise or at all, save as aforesaid, set forth the same or the particulars or value thereof; but this defendant saith, he hath heard and believes, that the said defendant J. A. shortly after the death of the said R. A. did cause a particular and exact account or inventory to be taken of the said household furniture and plate, and did also cause a valuation to be made thereof, whereof this defendant craves leave to defer to the answer of the said J. A. to the complainant's said bill, in respect of

of the said furniture and plate, and the particulars, value and amount thereof; this defendant admits, that he did sell the interests of the said R. A. in the lands in the will of the said R. A. mentioned, which were held by determinable leases until the respective times in this defendant's former answer for that purpose mentioned, but denies that same was owing to any neglect of this defendant, or that he this defendant by neglecting to sell the interests of the said R. A. in the land in the will of the said R. A. mentioned, or by any neglect, or very much, or at all diminished the fortune of the said residuary legatees; and this defendant saith, he hath in his answer to the complainant's said original bill set forth, the nature of the several estates and interests of which the said R. A. died seized and possessed of, and believes that such of the said lands as were held by determinable leases, every day in some degree decreased in their value, tho' this defendant by no means admits, that the not selling thereof was of the injury to the legatees in bill, as by bill pretended, the profit rents thereof being adequate to the profits arising from a sale, as this defendant verily believes; this defendant further answering admits, that he this defendant claims a sum of money to be due to this defendant, for interest of the different sums from time to time advanced by this defendant as executor of the said G. H. and R. A. and as a trustee in the will of the said R. A. over and above all sum and sums of money received by this defendant as executor and trustee as aforesaid, but not otherwise, and this defendant humbly hopes this honorable court will deem it just and reasonable, and accordingly direct, that this defendant shall be allowed interest upon all sums which shall appear to have been so advanced, this defendant allowing interest for all sums which shall appear, if any such shall so appear, to have remained in the hands of this defendant unapplied or undisposed of; this defendant denies that he this defendant ever refused to charge himself with interest for the sums by him received and remaining in the hands of this defendant unapplied and undisposed of, this defendant being willing, if any such shall so appear, to be charged with interest thereon, upon this defendant's being allowed interest for the sums by him advanced in the execution of the trusts in the wills of the said G. H. and R. A. respectively; this defendant admits, that he this defendant has never yet come to a just and fair settlement or any settlement

with the complainant W. touching the premises, but this defendant denies that there is a large or any sum of money due to the complainant W. on account thereof, or that there is any sum of money whatsoever due to the complainant W. by this defendant upon any account whatsoever, on the contrary, this defendant saith, that it well appears, as the truth and fact really is, that there is now a very considerable sum or ballance remaining due to this defendant, upon account of the said trusts in the wills of the said G. H. and R. A. and that the complainant W. stands justly indebted unto this defendant in the principal sum of seventy nine pounds twelve shillings and six pence sterling, being the amount of his two promissory notes, over and besides the interest due thereon, and the costs and expences which this defendant sustained or was put to in proceeding at law for the recovery thereof; this defendant admits, that he this defendant did, as of last Michaelmas term, cause a declaration to be filed against the complainant W. in his majesty's court of King's Bench in this kingdom, for the recovery of the amount of the said two notes in bill mentioned, and that this defendant threatens and intends when permitted by this honorable court, to obtain judgment thereon, and unless the same shall be paid, to issue execution upon such judgment; but this defendant denies, that he this defendant threatens or ever threatened to throw the complainant into goal, or thereby to deprive him of the means of proceeding in this cause, or establishing any just claim which the complainants or either of them have, or hath, or pretend to have against this defendant; and this defendant saith, he hath heard and believes, that the complainant W. merely for vexation and delay, caused a general demurrer to be put into the said declaration, which yet remains undisposed of, and saith, he verily believes that the complainant W. was as well at the time of filing his original bill in this cause, as at the time of filing the present bill, and is now thoroughly satisfied and convinced in his conscience that there was and is a considerable ballance remaining due and owing to this defendant upon the foot of his said account, as executor of the said G. H. and R. A. and as the surviving trustee or devisee in the will of the said R. A. and this defendant saith, he verily believes that the complainant's present bill, which was filed for an injunction to stop this defendant's proceedings at law against the complainant W.

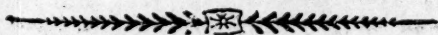
W. from recovery of the sums due and secured by the said promissory notes, as this defendant believes, as well as the complainant's original bill in this cause, and each of them, was and were calculated, schemed and contrived by the complainant W. (who is an attorney) for the sole and only purpose of taking and using every opportunity and advantage which his profession can furnish him with, to harrafs and distress this defendant, well knowing or at least hoping, that this defendant's state of health is so much impaired by gouty or rheumatic complaints, and his time and attention so much employed in a public office, which he this defendant hath for upwards of twenty five years last past, held under his majesty's court of Exchequer in Ireland, that he this defendant would, from his peaceable disposition and utter aversion to all kinds of litigation, submit to any terms however unreasonable, which the complainant W. should think proper to impose upon this defendant, rather than suffer his peace of mind to be disturbed, and his health more impaired by the complainant's continuing to involve this defendant in law suits, for recovery of demands which this defendant is advised and humbly apprehends will in the end appear vexatious and groundless; this defendant denies, that the paper writing in the complainant's bill mentioned, which was viewed and endorsed by the defendant, previous to the filing of the defendant's answer to the original bill in this cause, was written by this defendant in the absence of the complainant W. as by the complainant's bill is untruly suggested; on the contrary, this defendant saith, that the said paper writing was written by this defendant in the presence of the complainant W. and taken by him from this defendant upon the occasion and in the manner mentioned in this defendant's said answer to the complainant's said original bill, and not otherwise, to the knowledge, recollection or belief of this defendant; this defendant saith, he cannot from his knowledge, credible hearsay or belief set forth, whether the complainant W. did by letter dated the seventeenth day of July, one thousand seven hundred and eighty three, or of any other date, express his disapprobation of the compromise in bill, or whether the complainant W. did ever write such letter as in bill, or whether such alledged letter was in the words and figures in the bill, or what the import thereof was, if any such was ever written, this defendant being a total stranger thereto, and never having seen

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or even heard thereof, save by the charge in bill, to the knowledge, recollection or belief of this defendant; but this defendant saith, he believes if the complainant W. expected or had any hopes of being employed in the defence or prosecution of the suit in the complainant's bill mentioned, so as to have had any prospect of deriving an advantage to himself in the way of his profession, he, complainant W. would have disapproved of and endeavoured to prevent a compromise of such suit; this defendant saith, he knows not, but hath heard and believes, that the deed or deeds in the complainant's bill mentioned, by which the said R. A. disposed of his said house in William-street, is or are in the hands of the defendant J. A. but what the short or other contents thereof are, or who are the witnesses thereto, this defendant knows not, nor can he form a belief; this defendant further answering saith, that he this defendant, for the reasons herein before and in this defendant's former answer mentioned, did employ the said D. T. as agent and receiver, as herein before and in said former answer mentioned, and saith, he so employed the said D. T. without any previous consent for that purpose in writing, from any person whatsoever, this defendant not deeming such consent necessary, and apprehending that he this defendant had a good right so to do, which he humbly hopes this honorable court will think he had, under the circumstances herein before and in this defendant's former answer mentioned, and this defendant saith, that he paid the said D. T. the several sums of money in the schedule annexed to this defendant's said former answer for that purpose mentioned, by permitting him from time to time to deduct or retain in his hands, out of the rents by him received, several sums of money, which, upon a settlement of accounts between the said D. T. and this defendant for the rents so by him received, amounted to the sums mentioned in the said schedule and accounts, which settlement of accounts was so had and made in or about the month of November, one thousand seven hundred and eighty five; and this defendant saith, he did not make any charge or claim, any allowance for the said several sums so paid or allowed to the said D. T. by this defendant as aforesaid, until after the filing the complainant's original bill in this cause; and this defendant saith, that the reason this defendant did not make such charge or claim, such allowance was, that
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this defendant did not until after the time of filing the said bill, settle accounts with the said D. T.; this defendant admits, that he this defendant, for the reasons herein before and in this defendant's former answer mentioned, did permit the said J. A. the widow of the said R. A. to enjoy the several articles of plate and household furniture which were in the said R. A.'s said dwelling-house in William-street, at the time of his death; and this defendant saith, that he this defendant had the consent and directions of all the residuary legatees in the will of the said R. for that purpose, which consent was not in writing, but was merely verbal, this defendant not deeming any such written consent necessary from such residuary legatees, who were this defendant's sisters and brother, nor would the same have been necessary, as this defendant verily believes, had not the complainant W.'s connection by marriage with one of them made it so, but whose consent in her life-time was also given to this defendant, with that of the said other legatees, with respect to the giving away and disposing of the said fortune and plate as aforesaid; this defendant saith, he cannot from his knowledge, recollection or belief set forth the particulars or value of the said furniture or plate save as aforesaid, this defendant not having, for the reasons aforesaid, kept any account thereof; this defendant further answering saith, that the two promissory notes herein before and in the bill mentioned, were passed to this defendant for the reasons and upon the occasions herein before mentioned, and not otherwise, but this defendant absolutely denies, that such agreement as in the bill mentioned, or any other agreement whatsoever, save as herein before mentioned, was entered into on that occasion between the complainant W. and this defendant; this defendant admits, he this defendant, for the reasons herein before mentioned, and not otherwise, refuses to allow the amount of the said notes, or any part thereof to the complainant W. as part of the sum untruly alledged or pretended by him to be due to him, pursuant to the pretended agreement in the bill mentioned, and that he this defendant has commenced an action against the complainant W. for the recovery of the amount of the said two notes; and this defendant humbly hopes he will not be restrained by the injunction of this honorable court from proceeding in the said action for the recovery thereof; this defendant denies all manner of unjust combination

nation with which by the bill he is charged, without this, that any other matter or thing in the complainant's said bill of complaint contained, material or effectual in the law for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied is true, all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall award, and therefore prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

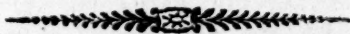


The several Answer of R. S. Esq; only Son and Heir at Law, and also personal Representative of S. S. formerly of Dunany, in the County of Louth, Esq; Deceased, one of the Defendants, to the Bill of Complaint of A. C. of the City of Bath, Widow, and D. S. of the City of Dublin, Esq; Executors of the last Will and Testament of M. C. Esq; Deceased, and also Guardian of the Person and Fortune of M. C. only Son and Heir of said M. C. Deceased, an Infant under the Age of twenty one Years, Complainants.

THIS defendant saving and reserving to himself, both now and at all times hereafter, all and all manner of benefit and advantage of exceptions, that can or may be had or taken to the many untruths, uncertainties and insufficiencies in the complainants said bill of complaint contained, for answer thereunto, or unto such part thereof, as is material or effectual for this defendant to make answer unto, answering faith, he admits that he is the eldest son and heir at law, and also personal representative of S. S. formerly of Dunany, in the county of Louth, esquire, deceased, and heard and believes, and therefore admits, that the deeds of leases and release in bill mentioned, were made on or about the time, between the parties, and for the purposes in bill particularly set forth and stated, and believes that S. P. in bill named, in pursuance of the powers in him vested, did apply to the complainants to lend and advance to him, the sum of money in bill stated, on a mortgage of the premises in bill mentioned, which the complainants agreed to do, and accordingly did lend and advance to the said S. P. the sum in bill mentioned, who thereupon did, as well as the other parties in bill mentioned, execute and perfect to the complainants, a mortgage of the premises in bill mentioned, subject however, to a proviso or condition of redemption, on payment of the said sum of one thousand pounds, and the interest thereof, on a day therein mentioned, and long since past, as by the said last mentioned deed, to which this defendant for greater certainty craves leave to refer, when produced

will

will more fully and at large appear; and this defendant saith, he is a stranger to the several other matters and things charged by the bill, and is not at all interested in the event of this cause, save as the heir at law, and personal representative of the said S. S. who was a trustee, as in bill is stated, but this defendant is ready to do herein, as this honorable court shall direct him; this defendant denies all manner of unlawful combination and confederacy, wherewith he stands charged by the bill, without this, that any other matter or thing, material or effectual in the law, for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which matters and things this defendant is ready and willing to aver, justify, maintain and prove, as this honorable court shall direct, and therefore humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.



Joint

*Joint Answer of C. T. and B. T. otherwise L. his Wife,
sworn November, and filed 6th December, 1793.*

ADMIT, that complainant in one thousand seven hundred and eighty eight, exhibited his bill in this court to be relieved against the bond in bill, but defendant B. positively saith, which defendant C. believes to be true, that said bond was not forged or fabricated, as by bill untruly alledged, but was really executed by complainant, and that the execution of said bond was proved on a trial had at Waterford, in the summer of the year one thousand seven hundred and eighty one, as in bill, and on which trial, a verdict was had for defendant B. but not by the fabricated testimony of any witness, for defendant B. saith, that the execution of the said bond was proved to the satisfaction of the judge who then presided, and of the jury who tried the same, by the testimony of a real and fair subscribing witness, and therefore defendants do not believe that such witness since said trial, acknowledged any fabrication in her testimony as in bill. Admit, that after said trial, complainant dismissed his said bill, and that he exhibited another bill, for original relief against said bond in the court of Chancery, in June, one thousand seven hundred and eighty four, and which bill was on the hearing dismissed, with full costs against the complainant, the justice of which, defendants believe could not be controverted. Defendant B. saith, which defendant C. believes, that in about two years after said trial and judgment pronounced on said verdict, a difference arose between defendant B. and her then attorney Mr. J. G. by reason of defendant's not being able to pay said G. the costs incurred in carrying on said suit for recovery of said bond, and that on application in the court of Common Pleas on the part of said G. they were pleased to order defendant B. to assign said judgment obtained against complainant on said verdict, to H. G. esquire, then deputy prothonotary of said court, IN TRUST, and for the purpose of securing to said G. the payment of his costs then due him, and in pursuance of which order, defendant B. by deed dated the thirteenth day of February, one thousand seven hundred and eighty four, assigned said judgment to said H. G. Admit, that

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said

said H. G. did afterwards, but not soon afterwards, it being four years or thereabouts after the execution of said assignment, (owing to the litigation of plaintiff, who in said month of June, one thousand seven hundred and eighty four, filed his said bill in said court of Chancery, to be relieved against said judgment, which was dismissed as aforesaid) caused complainant to be outlawed on said judgment, and that he obtained a grant in custodiam of the lands of Curraheen, Barnakill, Bowlatten, Ballinthea, and Kilgabriel in the county of Waterford; but whether said lands were or were not of the yearly value of five hundred and one pounds, as in bill, defendants know not, neither can they set forth from hearsay or belief, nor can they set forth from knowledge, &c. whether said lands were the only estates which complainant was then seized of. Say, it is not true, as in bill, that said H. G. J. W. or P. C. in bill, or any of them, about the year one thousand seven hundred and eighty one, as in bill untruly alledged, enter into receipt of any of the rents of said lands for defendants, it was not until Hilary term, one thousand seven hundred and eighty four, that judgment was obtained on said verdict, owing to the litigation of plaintiff, and therefore defendants say, said H. G. J. W. or P. C. could not have entered into receipt of the rents of said lands, in said year one thousand seven hundred and eighty one; but admit that said J. W. who was the attorney of this defendant B. having been appointed receiver under said custodiam, by an order of this court, that he in the year one thousand seven hundred and eighty nine, and not before, as defendants believe, entered into receipt of the rents and profits of said lands, or some part thereof, and that also in one thousand seven hundred and eighty nine, or beginning of one thousand seven hundred and ninety, he entered into receipt of other rents of complainant's estates in bill, and that he continued in receipt till the year one thousand seven hundred and ninety, as defendants are informed and believe, and not in one thousand seven hundred and ninety one, as in bill, and that by deed dated twenty third of April, one thousand seven hundred and ninety two, said H. G. assigned said judgment, and the other two custodiams after mentioned, to defendant C. the husband of defendant B. (said J. G. having before that time been settled with by defendant B.) but do not believe said P. C. ever received a shilling rent out of said lands. Admit that complainant on death of his brother C. K. in bill,

bill, succeeded to other estates in the counties of Waterford and Dublin, but cannot set forth from knowledge, &c. what the yearly value of same amounted to, but believe they did not amount to three thousand pounds a year, as in bill, but admit that said H. G. as trustee for defendant B. obtained two several custodiams of said estates in the counties of Waterford and Dublin, and that said J. W. under the authority of said H. G. entered into receipt of some part of the rents thereof, but what yearly sum same amounted to, cannot set forth from knowledge, &c. never having been able to get from said W. a regular or perfect account of the receipt of said rents. Believe complainant was disappointed, as in bill, by the dismissal of his said bill in said court of Chancery, in all expectation of relief against said bond, but say, they do not recollect ever to have received any notice from complainant, requiring defendants or said W. to furnish complainant with an account of the sums received, or of the ballance claimed to be due on foot of said judgment and custodiams, and offering to pay down whatever ballance should on a fair settlement appear to be due, and therefore never disregarded said notice, but admit said J. W. continued in receipt of some part of complainant's said estates, until the year one thousand seven hundred and ninety, as defendants are informed and believe, and not in one thousand seven hundred and ninety one, as in bill. Say, they do not believe that complainant was at all convinced, that all money due on said judgment, which was a just and fair judgment, was paid, or that he again in said year called on defendants to account, or that defendant C. alledged to complainant that he could not do so on the pretence in bill, no such application having ever been made to him, but on the contrary, defendants say, they were on their part always ready and willing to come to a just and fair account with complainant, for all monies received on account of said judgment and custodiams, and that they repeatedly caused applications to be made to complainant, to furnish defendants with copies of the several receipts passed by said W. to complainant's tenants, in order that they might compare the same with said W.'s account. Say, they are informed and believe, that complainant repeatedly acknowledged, that he had said W.'s receipts for the rents so by him received under said custodiams, and that he repeatedly promised to furnish defendants, or their present agent Mr. J. P. with copies thereof,

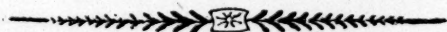
and

and that notwithstanding complainant's said acknowledgment and repeated promises, defendants have never been able to procure them. Say, that very shortly after filing of complainant's present bill, and with a view to come to an amicable and fair settlement, they on the eleventh of June last past, caused complainant's attorney, Mr. R. E. to be served with a written notice in this cause, to the following effect, "Sir, take notice, that on the part of the defendants in this cause, I am ready and willing, and hereby offer, and as I have repeatedly heretofore offered, to come to an account for all the rents received out of the several lands granted in custodiam, and in the pleadings in this cause mentioned, and in order to come to a complete and fair settlement, I expect that you will furnish me with copies of all the receipts passed to the several tenants of the said lands by the defendants H. G. and J. W. or by another person on their behalf." But which notice defendants are informed and believe, complainant utterly refuses to comply with, by which they insist, that it manifestly appears, complainant's sole object is to harass and oppress defendants, and to delay them in the payment of their just demand. Say, they believe, that if complainant would come to a fair account with defendants he would be still indebted to them in a considerable sum of money, and therefore say, it is not true, they from a consciousness that nothing was due them on foot of said judgment or proceedings, that they did not from said year one thousand seven hundred and ninety one, take any proceedings on foot of said custodiams, till April, one thousand seven hundred and ninety two, but say, they deferred taking any proceedings on said custodiams, in hopes and expectation that complainant would have complied with defendants applications, and that said accounts might have been amicably settled, and not otherwise, but finding they were disappointed in such their hope and applications, they did in April, one thousand seven hundred and ninety two, cause orders to be served on some of the tenants of complainant's estates, for the purpose in bill, but deny complainant thereupon called on defendants to account with complainant, or that they declined or refused to do so, on the pretence in bill, no such application having ever been made to them, but admit they cannot come to any account with complainant, unless he assists defendants with said W.'s receipts. Say, for the reasons aforesaid, they desisted from proceeding under said custodiams,

custodiams, till April, one thousand seven hundred and ninety three, as in bill, and not otherwise, and that in said month of April, one thousand seven hundred and ninety three, defendants caused orders for attachments to be served on several of complainant's tenants, for not having paid their rents, pursuant to the above mentioned order, and to compel them to pay their rents to defendant C. or his order, but deny that they are conscious, or at all believe, that nothing remains due on foot of said custodiams, or said judgment, or that on the contrary, same or all costs incident thereto, or occasioned thereby, have been discharged, with a considerable, or any overplus; on the contrary, there still remains a considerable sum due on the foot of said custodiams. Deny they confederate together, or with any other person whatever, or refuse to account for any of the rents received under the authority of said custodiams, or said judgment, or save only according to the value at which said lands were respectively extended, on the inquisitions granted on said outlawrys, for defendants say, they are ready and willing to come to a fair and just account for all sums received under said custodiams and judgment; deny they declare they will continue in receipt of the rents and profits of said lands, accountable only for the extended values thereof, as by bill untruly alledged. Say, they believe complainant was outlawed at suit of said H. G. as assignee of defendant B. some time in October, one thousand seven hundred and eighty six, and that the dates of the several *capias ut legatums*, according to the best of defendants belief, are together with the dates of the several inquisitions and custodiams, and the several lands comprized in said custodiams, set out in a schedule to defendants answer annexed, refer to said several writs of *capias ut legatum*, inquisitions and custodiams on record. Say, they cannot more particularly set forth from knowledge, &c. what were the amounts yearly, of the rents received out of said lands, and believe said J. W. entered into receipt of the rent of said lands, or some part thereof, about time before mentioned, and continued therein till one thousand seven hundred and ninety, and not one thousand seven hundred and ninety one, as in bill. Defendant C. saith, which defendant B. believes, that he did not as he best recollects, at any time receive a shilling rent from any of complainant's tenants, under any of said custodiams, and saith, the only sums he received on account thereof, was as follows, that is to say, from said J. W.

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one thousand six hundred and ninety pounds, two shillings and a penny halfpenny, and no more, including the amount of said W.'s bond for one hundred and thirteen pounds, fifteen shillings, and from said H. G. two hundred and ninety eight pounds, sixteen shillings and nine pence, making together, the sum of one thousand nine hundred and eighty eight pounds, eighteen shillings and ten pence halfpenny, and no more ; and defendant B. saith, which defendant C. believes, that she never received a shilling out of said lands, on account of said custodiams or judgment debt, and therefore they cannot more particularly, by schedule or otherwise, set out the amount of the rents received out of complainant's said lands, so as aforesaid granted in custodiam.



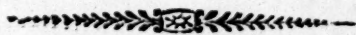
The Schedule to which the foregoing Answer refers, containing an Account of the Dates of the several Capias ut Legatums, Inquisitions, and Custodiams, issued and obtained by H. G. Assignee of the Defendant B. against the Complainant in Bill, and also the several Denominations of Lands mentioned in said Custodiams.

Capias ut legatum directed to the sheriffs of the county of Waterford, at the suit of the said H. G. against the complainant in bill, bearing date the thirteenth day of February, in the twenty sixth year of the reign of his present majesty, George the third, and returnable in fifteen days from Easter ; inquisition had and returned thereupon bearing date the twenty third day of April, one thousand seven hundred and eighty six, and taken by R.M. sheriff of said county ; on which inquisition a custodiam was obtained against the lands of Curraheen, Knockinline, Boolatine, Ballinthea, Barnakill otherwise Barnkill, and Woodstown, in the county of Waterford, for one thousand five hundred pounds debt, and fifty six pounds, sixteen shillings and ten pence cost, bearing date the fifth of July, in the twenty sixth year of his present majesty's reign.

Capias ut legatum directed to the sheriff of the county of Waterford, at the suit of the said H. G. against the
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complainant, bearing date the fifth day of May, in the twenty eighth year of his present majesty's reign, and returnable on the octave of the holy Trinity, inquisition had and returned thereupon, bearing date the seventeenth day of May, one thousand seven hundred and eighty eight, and taken by J. M. sheriff; on which inquisition, a custodiam was obtained against the lands of Ballykeroge, Pilltown, Ballyvoyle, Durrow, Milleistown, Shammacolles, Knockdrumlea, Ballynevogy, Gortavicary, Glandalligan, Island otherwise Island Hulbock, Garranspig otherwise Bishop's-grove, Banclay, Carrigatras, Knockbay, Ringor, Doughtane, Kilmallow, and Kilgabriel, all situate in the county of Waterford, the estates of the complainants, bearing date the second of July, in the twenty eighth year of his present majesty's reign, for one thousand five hundred pounds debt, and fifty six pounds, sixteen shillings and ten pence costs.

Capias ut legatum directed to a coroner of the county of Dublin, at the suit of said H. G. against the complainant, bearing date the ninth day of April, in the twenty eighth year of his present majesty's reign, returnable on the octave of the holy Trinity; inquisition had and returned thereon, bearing date the nineteenth day of May, one thousand seven hundred and eighty eight, taken by W. B. coroner of said county; on which inquisition, a custodiam was obtained against the towns and lands of Loughlow, Johnstown, several tenements in the town of Newcastle, and the lands of Colemine, situate in the county of Dublin, the estate of the complainant, bearing date the second day of July, in the twenty eighth year of his present majesty's reign, for one thousand five hundred pounds debt, and fifty six pounds, sixteen shillings and ten pence costs,



The Answer of H. G. Sworn the 1st, and Filed the 3d of February, 1794.

Saith, he heard and believes that complainant filed his bill in this court, about the time in bill, and to the effect in bill, and that complainant also exhibited another bill, in the court of Chancery, which was on the hearing dismissed with full costs; refers to the proceedings had on both said bills. Admits, that in Hilary term, one thousand seven hundred and eighty four, such assignment as in bill, was made to defendant, as deputy prothonotary of the court of Common Pleas, under an order of said court, and that the proceedings under such assignment as in bill, were had. Admits, that defendant J. W. received part of the rents of complainant's estate, but to what amount, cannot set forth from knowledge, &c. Knows not whether from the receipt of the rents of complainant's estates, defendants C. T. and B. his wife, have been overpaid their demand against complainant, or whether there is or is not a ballance due by complainant to said T. and wife, but refers to such answers as said T. and wife, and said W. shall give thereto, and to the accounts of the receipt of the rents of complainant's estates by said defendants, or those employed by them. Saith, he has in a schedule set forth a just and true account of all such sums as he received out of complainant's estates, under the custodiams in bill, with the dates when he received same, and from whom, and out of what lands, and for which he has fairly accounted with defendants T. and wife, and also for which he this defendant, on the eighteenth of March, one thousand seven hundred and ninety two, received a receipt signed by said defendants T. and wife, acknowledging to have settled said account with defendant, and in which said account, defendant charged poundage, and the sum of fifty pounds, for costs in suing complainant, and expences which defendant had been put to in defending the suits in this court, and in the court of Chancery, to which this defendant was made a party by complainant.

The Schedule to which the foregoing answer refers, containing an account of the several sums received by this defendant H. G. from the tenants of the complainant, under the custodiam in the complainant's bill mentioned.

1790.	£.	s.	d.
Jan. 23d. By cash received from E. and H. D. out of the lands of Loughtown, in the county of Dublin, on account of rent.	42	10	0
June 28th. By do. from do. per F.D. on account of do.	42	10	0
Jan. 23d. By do. from R. and S. H. out of the lands of Johnstown, in the county of Dublin, on account of do.	27	0	0
April 26th. By do. from do. out of the lands of do. on account of do.	27	0	0
Nov. 12th. By do. from do. out of do. lands, on account of do.	27	0	0
Jan. 23d. By do. from F. and J. M'A. out of the lands of Colemine, in county of Dublin, on account of do.	27	0	0
April 26th. By do. from do. account do. in said county.	27	0	0
Nov. 12th. By do. from do. account do. in said county.	27	0	0
Jan. 23d. By do. from M. B. out of the lands of Colemine, in said county, on account of do.	11	10	0
April 26th. By do. from do. account do. out of said lands.	11	10	0
Nov. 12th. By do. from do. account do. out of said lands.	11	10	0
Jan. 23d. By do. from M. L. out of the lands of Johnstown, in the county of Dublin, on account of rent.	1	1	3
April 26th. By do. from do. on account of do.	1	1	3
Nov. 12th. By do. from do. on account of do.	1	1	3
April 26th. By do. from P. M. and A. C. on account of rent out of the lands of Island, in the county of Waterford.	82	10	0

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Answer

Answer of J. W. gent. sworn.

Saith, he heard and believes that complainant exhibited his bill in this court, at the time in bill, to be relieved against the bond in bill, but whether said bond was forged or fabricated, cannot set forth, but in as much as due execution of said bond had been fully proved, defendant hath reason to believe same was neither forged or fabricated. Saith, he heard and believes, complainant dismissed his said bill, and exhibited another bill in the court of Chancery, for the purpose, and at the time in bill, and that said bill was also dismissed on the hearing, with full costs. Heard and believes, that the judgment had on the verdict in bill mentioned, was assigned to H.G. in bill, for the reasons in bill were carried on, and that said H. G. obtained a grant in custodiam of the lands in bill, but of what yearly value same were, cannot from knowledge, &c. set forth, or whether same were or were not the only estate of which complainant was seized or possessed. Saith, he hath not heard, save by bill, and doth not believe, that said H. G. in one thousand seven hundred and eighty one, by himself or P. C. in bill, as his receiver, entered into receipt of the rents of the lands in bill; refers to the answer of said G. Saith, he did not enter into receipt of the rents or profits of said lands as receiver appointed by said G. but was appointed a receiver under the order of this court, which bears date the twenty ninth of February, one thousand seven hundred and eighty eight; and saith, the rents which he received under the said order are set forth in a schedule to his answer annexed, as defendant believes, although defendant hath been put to very great trouble in endeavouring to receive more of the rents of said lands, and by endeavouring to get attachments executed against several of the tenants of said lands, who were considerably in arrear to the custodee, but who had paid their rents to the complainant, as defendant heard and believes: saith, he accounted for the rents so by him received out of the said lands, pursuant to the order of this court, bearing date the twenty eighth of February, one thousand seven hundred and ninety one, to which account, filed in the proper office, he refers. Heard and believes that the said H. G. assigned said judgment to C. T. in bill, who defendant believes is the husband of said B. L. : saith, he entered into receipt of

of said rents in manner aforesaid, and not otherwise; and saith, he was attorney for said B. and C. T. her husband. Heard and believes, that complainant on the death of his brother C. K. in bill, succeeded to other estates in the counties of Waterford and Dublin, but of what yearly value same were, cannot set forth; and heard and believes, that said H. G. obtained grants in custodiam of said estates, and that defendant, under a power of attorney from the said H. G. received part of the rents of said lands, which are also set forth in said schedule according to the best of defendant's knowledge and belief, and all which said several sums so received by defendant under the authorities aforesaid, amount to the sum of two thousand one hundred and forty one pounds fourteen shillings and ten pence, or thereabouts; refers to said schedule. Saith, he believes complainant, in some time after the dismissing the said last mentioned bill, caused a notice in writing to be served on defendants fix clerk, thereby requiring that further proceedings should be staid on the part of defendant, and thereby offering to pay such sum as should appear due by him to said B.; but saith, that defendant, some time in one thousand seven hundred and ninety one, as he best recollects, gave up all the papers in said suits to the then attorney of said T. therefore defendant has not a copy of said notice, whereby he might refer to same as to particulars thereof; but saith, he did not see or hear of any other notice which complainant might have served, as no such in writing or otherwise came to the knowledge or hearing of defendant, according to the best of his knowledge; &c. but saith, if complainant was serious in his said proposal so made by said notice, he might have long since had an account of the money received by defendant, and the other persons who received rents out of said lands, as defendant believes; and saith, he was always ready and willing at all times to meet complainant, or any person on his behalf, to settle respecting the rents received by defendant; and saith, he frequently called on complainant's attorney, to know if he had defendant's vouchers for the purpose of settling said account, for which he told defendant he would apply, notwithstanding which defendant hath not been able to see said vouchers, in order to enable him to settle finally, respecting the rents received by him. Saith, he is a stranger to the proceedings carried on by said defendant C. T. and B. his wife against complainant, since

since said year when defendant gave up said papers, but verily believes, that there is a large sum of money for still due to said C. and B. on foot of said judgment, principal, interest, and the costs in the several suits which were had at law and equity respecting said bond, the costs of which defendant believes amount to a large sum of money. Saith, he hath not heard, save by bill, and doth not believe, that said C. T. declined entering into any settlement with complainant, under a pretence that he could not get defendant's account, as by bill alledged, he, said T. having informed defendant, that he could not get complainant, or any person on his behalf, to go into a settlement of said account. Saith, he furnished said C. T. with an account of the rents received by him, as also the several sums paid by defendant to said C. T. and for his use, together with defendant's bill of costs in said suits, and hath fairly and fully, to the best of his knowledge and belief, accounted with and paid him said T. for all money which came to defendant's hands, as receiver of such part of the rents of said lands as came to defendant's hands. Denies all manner of unlawful combination by bill charged; and saith, he hath at all times been ready and desirous to account with complainant for the rents received by him under the authority of said custodiam; saith, he believes other persons by bill stiled confederates, have been so likewise, not according to the value in bill, or any other value, but according to the sums by him and by this defendant received out of said lands. Saith, he had in said schedule, according to the best of his knowledge and belief, a full, true and fair account of all the money received by him out of the several lands granted in custodiam as aforesaid, to which defendant was appointed receiver; and saith, he received the rents in said schedule mentioned, as the several tenants who were under the control and direction of complainant, as defendant believes, and several of whom informed defendant, that complainant received several gales of rents from them, to which said H. G. as custodee, was entitled to a considerable amount, thought proper to pay them to defendant without specifying the gales of rent for which same was paid, or the lands out of which same was paid, as defendant best recollects, but for certainty thereof, and of the other matters required by bill relative thereto, defendant refers to the several receipts given by defendant for said rents. *This defendant denies combination and concludes generally.*

Answer

Answer to a Bill brought by one Daughter and her Husband, against the other Daughter and her Husband, for a discovery of the personal Estate of their late Father, come to the Hands of the Defendant and his Wife.



The Answer of E. N. Defendant, to the Bill of Complaint of W. B. and M. B. Complainants.

THE said defendant now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties and imperfections of and in the complainants said bill of complaint contained for answer thereunto, or unto so much thereof, as this defendant is advised is material for him this defendant to make answer unto; he answereth and saith, that he doth believe and admit it to be true, that J. E. in the said complainants bill named, was possessed of, or otherwise well and sufficiently entitled unto, a certain piece or parcel of ground, with a brick messuage or tenement, and other erections or improvements thereon, at Phippsborough in the county of Dublin, for the remainder of a term of eighty nine years, thereof granted to him the said J. E. by indenture of lease, bearing date on or about the fourteenth day of August, in the year of our Lord one thousand seven hundred and four, and to commence from the twenty fourth day of June then last past, at the yearly rent of five pounds, payable as therein is mentioned; but for this defendant's greater certainty as to the date and contents of the said indenture of lease, this defendant craves leave to refer thereto, when the same shall be produced to this honorable court, which said indenture of lease, this defendant doth admit, is now in his this defendant's custody: and this defendant further answering saith, that he believes it to be true, that the said J. E. being so possessed or entitled as aforesaid, did by indenture, bearing date on or about the first day of March, which

which was in the year of our Lord one thousand seven hundred and four, and made or mentioned to be made, between the said J. E. of the one part, and T. A. and J. K. (who as this defendant believes, are both since dead) of the other part, for the consideration therein mentioned, did assign and set over unto the said A. and K. their executors, administrators, and assigns, the said indenture of lease, and the premises thereby demised, to hold to the said A. and K. and the survivor of them, and to the executors and administrators of such survivor, for the then residue of the said term of eighty nine years, upon the several trusts in the complainants said bill of complaint for that purpose mentioned and set forth: and this defendant doth likewise believe it to be true, that there is some clause or proviso in the said indenture of assignment, whereby the said J. E. had power to revoke or alter all or any of the uses, limitations, or trusts therein contained; but for this defendant's greater certainty, as to the date and contents of the said indenture of assignment, this defendant craves leave to refer thereto, when the same shall be produced to this honorable court, which said indenture is now in the custody or power of Mr. J. S. this defendant's late proctor, as this defendant believes, who refuses to deliver up the same to this defendant, although he hath been several times applied to by or on the behalf of this defendant for that purpose: and this defendant further answering, doth admit it to be true, that the said J. E. was also possessed of, interested in, or otherwise well entitled unto one other piece or parcel of ground, with a brick messuage or tenement, and other erections or buildings thereon, situate and being at Phippsborough aforesaid, and which he held by virtue of, or under a certain indenture of lease, bearing date on or about the fourteenth day of August, which was in the year of our Lord, one thousand seven hundred and four, thereof granted to him by T. M. for a term of eighty nine years and an half, commencing from the twenty fourth day of June then last past, at or under the yearly rent of five pounds, and was also possessed of, or entitled unto one other piece or parcel of ground, and five messuages or tenements, and other the erections or buildings thereon, at Phippsborough aforesaid, which he held by lease from A. M. widow, and J. M. gentleman, bearing date on or about the twenty first day of April, in the year of our Lord, one thousand seven hundred and seventeen, for a term of eighty years, commencing from the twenty

fifth

fifth day of December then last past, at and under the yearly rent of twenty pounds, but this defendant doth not know or believe, that the said J. E. was possessed of, interested in, or entitled unto any other messuages or tenements, ground, erections or buildings whatsoever, save and except what are before mentioned and set forth: and this defendant further answering, saith, that he doth not know, nor can set forth, whether the said J. E. was ever minded or desirous to revoke the trusts or uses in the said indenture of the first of March, one thousand seven hundred and four, or to settle the same, together with his other messuages or tenements, in any different or other manner, neither doth this defendant know, nor can set forth, whether the said J. E. did ever make or execute such indenture, as in the complainants bill is mentioned to bear date on or about the twenty first day of April, in the year of our Lord, one thousand seven hundred and seventeen, and to be made between the said J. E. of the one part, and J. K. in the bill for that purpose named, of the other part, nor whether the same, if any such was ever executed by him, is to the purport or effect in the bill for that purpose mentioned, this defendant having never yet seen the said indenture, nor ever heard thereof before the said complainants put in their answer to the original bill lately exhibited against them by this defendant, in this honorable court; but this defendant saith, that the said indenture of the twenty first of April, one thousand seven hundred and seventeen, (if any such there was or is, which defendant doth not admit) is not now, nor ever was in his this defendant's custody or power, nor to the best of this defendant's knowledge or belief, ever was in the custody or power of the said M. this defendant's late wife, or of any other person or persons, in trust for this defendant and the said M. his late wife, or either of them, nor doth this defendant know or can set forth, in whose custody or power the said deed or indenture (if any such there be) now is or ever was: and this defendant further answering, saith, that he doth admit it to be true, that the said J. E. had issue by M. his wife, two daughters, that is to say, E. the late wife of the said complainant W. B. and mother of the said other complainant, and M. who first intermarried with J. F. and was afterwards the wife of him this defendant, and no other issue, as this defendant believes; and this defendant saith, that he hath heard and believes it to be true, that the said M. this defendant's said late wife,

wife, intermarried with the said J. F. at or about the time in the bill for that purpose mentioned; and hath likewise heard and believes, that the said J. E. gave or agreed to give as her marriage portion, the sum of two hundred pounds, or some such like sum of money, but not more, as this defendant believes; nor doth this defendant know or believe, that he the said J. E. laid out any sum or sums of money in buying her cloaths or apparel, other than what was incumbent upon, or necessary for him to provide for her as his child: and this defendant further answering, doth believe and admit it to be true, that the said J. E. departed this life, at or about the time in the complainants said bill of complaint for that purpose mentioned; and that he died intestate, leaving the said M. his widow, and only two children, namely, the said E. and M. his two daughters then living, and that the said M. his daughter, was then married to the said J. F. but this defendant doth not know or believe, that she was provided for, or advanced in the world in any other manner than as is herein before mentioned; and this defendant doth admit it to be true, that the said M. the widow of the said J. E. some short time after the death of the said J. E. procured letters of administration to be granted to her, by and out of the proper ecclesiastical court, of all and singular the said J. E.'s personal estate; but for more certainty therein, this defendant craves leave to refer to the said letters of administration, when the same shall be produced to this honorable court: and this defendant saith, that he doth not know or believe, nor ever heard, save by the complainant's said bill of complaint, that the said J. F. ever became a bankrupt, or that any commission of bankruptcy ever issued against him, nor that he being thereupon found or declared a bankrupt, or an assignment being made of his estate and effects, the assignees under the said commission, exhibited their bill in this or any other court, against the said M. the widow and administratrix of the said J. E. or any other person or persons, as defendants, for the purposes in the complainants said bill for that purpose mentioned and set forth, nor that the said M. the widow and administratrix of the said J. F. put in her answer to the said bill, or thereby insisted in manner as in the complainants said bill is for that purpose mentioned and suggested; but this defendant saith, that in case any such commission of bankruptcy ever issued, or any proceedings had under the same, or any such bill or suit were at any time

time brought or commenced by the assignees under the said commission, he this defendant is an entire stranger thereto, having never heard thereof, save by or from the the complainants said bill; and therefore this defendant must leave the complainants to make such proof thereof, as they shall think proper or be advised; and this defendant saith, that in case any such suit was ever commenced by the said assignees, yet this defendant doth not know or believe, that the said assignees were fully satisfied that the said M. the daughter, had been fully advanced by her said father, in his life-time, or that she was not entitled to any other customary, or other further share of her said father's estate, or that for that or any other reason, the said assignees proceeded no farther in the said cause; but this defendant saith, that he hath been informed and believes, that some time after the death of the said J. F. (which happened in or about the year of our Lord, one thousand seven hundred and twenty six, or one thousand seven hundred and twenty seven, as this defendant believes) a bill was exhibited by, or on the behalf of one A. W. who was, or pretended to be a creditor of the said J. F. against the said M. the widow; but whether any answer was ever put in to the said bill, or any other proceedings thereon had, this defendant knows not: and this defendant further answering, saith, that he doth believe and admit it to be true, that the said M. the widow and administratrix of the said J. E. departed this life at or about the time in the complainants bill for that purpose mentioned, having first, as this defendant believes, duly made and published her last will and testament in writing, bearing such date, and of such purport or effect as in bill, and thereof made or appointed such executors, as in the complainants said bill is in that behalf mentioned and set forth; and that the said testatrix afterwards made a codicil to her said will, bearing such date, and of such purport or effect, as in the said bill is for that purpose mentioned and set forth, but for this defendant's greater certainty, as to the date and contents of the said will and codicil respectively, this defendant humbly craves leave to refer thereto, or to the probate thereof, when the same shall be produced to this honorable court: and this defendant further answering, saith, that he doth admit it to be true, that R. H. and D. C. refusing to prove the said will and codicil, or to act in the trusts of the said will, and having renounced the said executorship, letters of administration, with the said will and codicil

annexed, were afterwards granted by and out of the prerogative court of this kingdom, unto M. this defendant's late wife, who, as this defendant believes, by virtue thereof, became possessed of such part of the personal estate of the said M. E. as she could come at or receive, and also of the estate of the said J. E. unadministered by the said M. E. and in particular, of the said deed or indenture in the bill mentioned to bear date the first day of March, one thousand seven hundred and four; but this defendant saith, that he doth not know or believe, that the said M. ever had or possessed herself of the said deed or indenture, in the said bill mentioned to bear date on or about the twenty first day of April, one thousand seven hundred and seventeen, but saith, that he hath been informed, and believes, that a memorial of the said last mentioned deed was entered in the office for regulating of deeds and conveyances of messuages, lands, and tenements, some time on or about the day of which was about the space of after the death of the said J. E. and which said memorial, this defendant never knew or was informed of, until some time on or about the twenty fifth day of March now last past; and this defendant saith, that he hath heard and believes, that the said R. H. D. C. and E. B. complainant's late wife, or one of them, a few days after the death of the said M. E. locked up several deeds and writings relating to the estate of the said J. and M. E. or one of them, in a trunk, and removed or carried away the same from the said M. E.'s late dwelling house at Phippsborough, unto the said D. C.'s house, in or near Bride-street, Dublin, and of which said trunk, they the said H. C. and complainant's said late wife, or one of them, had or took the key, and saith, that the same continued there for the space of five or six months, to the best of this defendant's knowledge as to the time; and saith, that after the said M. this defendant's late wife, had procured letters of administration of the said M. E.'s personal estate, to be granted to her, who thereupon demanded, or caused to be demanded, the said trunk and writings, which were delivered to her accordingly, and were immediately carried or removed from the said C.'s house to Mr. J. A.'s at the Boot Inn, in Bolton-street, Dublin, who thereupon observed or took notice, that the said trunk had been before opened, and that the lock thereof had been cut off and put into the said trunk, but by whom the same had been so opened, or by whose order,

or

or for what reasons; this defendant is an entire stranger, as was also this defendant's said late wife, as this defendant believes; and this defendant further answering, doth admit it to be true, that the said M. this defendant's late wife, departed this life intestate, to wit, on or about the eighteenth day of October, in the year of our Lord, one thousand seven hundred and forty two, without leaving issue; and that E. the other daughter of the said M. E. and wife of the said complainant W. B. and mother of the said M. survived the said M. her sister, this defendant's late wife, but this defendant doth not know or believe, that the said E. at the death of the said M. her sister without issue, by virtue of the appointment made by the will of the said M. E. or by virtue of any power in the said deed of the twenty first day of March, one thousand seven hundred and seventeen, (if any such deed there really was or is) became well entitled to all the leasehold premises in the bill mentioned, for the residue of the several terms therein then to come, but therein this defendant humbly submits himself to the judgment of this honorable court; and this defendant further answering, saith, that he believes it to be true, that the said E. the other daughter of the said J. E. and M. his wife, departed this life at or about the time in the bill for that purpose mentioned, and that she died intestate, without leaving any other issue besides the said complainant M. her only daughter; but whether upon the death of the said E. the said complainant, or either of them, became entitled to all, or any part of the leasehold premises in the bill mentioned, for the then residue of the respective terms therein then to come, or to the original leases, or other deeds and writings relating thereto, or in particular, to the indentures of the first of March, one thousand seven hundred and four, and twenty first of April, one thousand seven hundred and seventeen, (if any such deed or indenture of the twenty first of April, one thousand seven hundred and seventeen, was ever really made or executed) this defendant knows not, but therein this defendant humbly submits himself to the judgment of this honorable court; and this defendant further answering, doth admit it to be true, that he this defendant, since the death of his said late wife, hath procured letters of administration to her, to be granted to him this defendant, by and out of the prerogative court, and also letters of administration of the goods, chattels, and credits of the said J. E. unadministered by this said defendant's said late wife

wife; and this defendant doth humbly hope and insist, that
 in regard the said J. E. died intestate, he this defendant, is
 by virtue of the statute for distribution of intestates estates,
 become entitled to _____ and to have or retain the
 original leases, and other title deeds and writings relating
 to the leasehold estates, late of or belonging to the said J.
 E. and this defendant further answering, saith, that he hath
 in the schedule here under written, and which this defend-
 ant prays may be accepted and taken as part of this his
 answer to the complainants said bill of complaint, set forth
 a true and particular account of all the deeds and writings
 relating to or concerning the leasehold estates of the said
 J. E. and M. E. or either of them, which were at any time,
 according to the best of this defendant's knowledge, infor-
 mation and belief, delivered to, possessed by, or came to
 the custody or power of this defendant, and his said late
 wife, or either of them, or of any other person or persons,
 for or in trust for them, or either of them; and saith, that
 he hath been informed, and believes, that several of the
 deeds and writings relating to the said leasehold premises,
 were possessed by, or came to the hands or custody of the
 said E. B. and as this defendant hath reason to believe, hath
 since her death, come to the hands or possession of the said
 complainants, or one of them; and this defendant further
 answering, saith, that he hath heard, and believes it to be
 true, that the said M. E. was possessed of, or entitled unto,
 a certain piece or parcel of ground, situate, lying or being,
 in Cook-street, in the city of Dublin, which she held by
 lease from J. H. bearing date on or about the fifteenth day
 of December, one thousand seven hundred and twenty, for
 the term of sixty years, or thereabouts, commencing from
 Michaelmas-day, one thousand seven hundred and twenty,
 at the yearly rent of three pounds ten shillings, as this de-
 fendant believes; and which said piece or parcel of ground
 is now let on building leases, at the clear yearly rent or rents
 of ten pounds, or twelve pounds, as this defendant believes;
 and this defendant saith, that he doth not know, nor ever
 heard, nor doth he believe, that the said M. E. was possessed
 of, or entitled unto any pieces or parcels of ground, other
 than the pieces or parcels of ground, messuages, tenements
 or buildings, which she had or claimed by, from, or under
 the said J. E. her husband, other than and except the piece
 or parcel of ground last before mentioned, and this defend-
 ant denies all and all manner of combination, &c.

Readings and Observations on BILLS for an ACCOUNT.



*Who are entitled to have an Account, against whom it lies,
and in what Cases.*



1st.

A Surviving factor may be compelled to account, not only for himself but likewise for his co-factor, altho' it was admitted that the executrix of the dead factor was compellable, and that among merchants *jus accrescendi* hath no place. *Pasc. 21 Car. 2. Holstcomb and Rivers coram lord keeper, Rainsford and Wyld justices. 1 Chan. Ca. 127.*

2d.

If a merchant employs his apprentice as a factor beyond seas, who dies, the merchant shall have an account against the administrator of the apprentice. *Lee and Bowler, Mich. 26 Car. 2 Rep. Temp. Finch 125.*

3d.

It was held by the court, that an infant was not compellable to account as factor, though it was urged, that by the custom of merchants he may, but an infant may be executor, and shall be charged, because the law enables him: so he may be charged in trover, because a tort, but not in contract, nor as bailiff, or for goods to carry on trade; and therefore when infants are factors, their friends should give security for their accounting. *Trin. 1700. Smally and Smally.*

4th.

A trustee made a letter of attorney to J. S. to manage and receive the rents and profits of the trust estate, who did so, and accounted to the trustee; and now being sued by the *cestuy que trust*, insisted that the trustee, and not he, was to account, and that he having already accounted,
he

he might be quiet as to the plaintiff; but he was decreed to account to the plaintiff. *Trin. 34 Car. 2. Pollard and Downes, 2 Chan. Ca. 121.* The reporter adds; note, that the trustee was dead, but that was not yielded as the reason.

5th.

The assignee of commissioners of bankrupts brought a bill to have a discovery and account of money received by the defendant on behalf of the bankrupt: the defendant pleaded, he received it only as a menial servant to the bankrupt, and had accounted for it to him already, and that the commissioners had already examined him upon interrogatories; but the plea was over-ruled. *Mich. 1682. Wagstaffe and Bedford, 1 Vern. 95. 2 Vent. 358. S. C.* But quære, whether there was not circumstances of fraud in this case, or a combination between the bankrupt and servant.

6th.

For if a man by answer swears, that what he received he received as a menial servant, and hath paid it over to his master, he shall not be put to account again, but he ought to disclose this matter in his answer. *Hil. 1682. Anon. 1 Vern. 136.*

7th.

So on exceptions to a master's report, which had reported the defendant's answer insufficient; lord keeper declared that it was sufficient for a servant or apprentice, in answer to a bill for an account, to say in general, that whatever he received, was by him received and laid out again by his master's orders. *Mich. 1683. Potts and Potts, 1 Vern. 208.*

8th.

The plaintiff, who was administratrix to her brother, a captain in colonel Churchill's regiment of marines, having prayed an account of his personal pay, and the pay of his servants, and also the pay of the company; it was insisted upon, on behalf of the defendants, that she was only entitled to an account of the captain's personal pay, and pay of his men, and not for the pay of the company, altho' they seemed to admit that a captain for land-service was to recruit his company, but would have it there was a difference when he was a captain of marines; or if the captain may be entitled, yet his
administrator

administrator was not; but lord keeper decreed an account of the whole. *Hil. 1711. Beliasis and Churchill, 2 Vern. 682.*

9th.

A. had a title to some houses, by a settlement made of them on his wife, but being obliged to go beyond sea, he left the deed of settlement with his brother, who being afterwards committed a prisoner, the defendant entered and enjoyed the houses several years; and it was decreed, that he should account for the rents and profits to A. 29 Car. 2. *Lister and Lister, Rep. Temp. Finch 285.*

10th.

If a man, during a person's infancy, receives the profits of an estate to which the infant is entitled, and continues to do so for several years after the infant comes of age, before any entry is made upon him, yet he shall account for the profits throughout, and not during the infancy only. *Pasc. 1699. Tallop and Holworthy, that an infant shall have an account of profits against an intruder; vide 1 Vern. 295. but if there be a verdict against his title, he must recover at law first.*

11th.

But if there is no trust nor infant in the case, nor any entry made by him who is entitled to the mean profits. Retolved *per* lord Chan. in the case of *Hutton and Simpson & Ux'*, & *e contra, Mich. 1716, 2 Vern. 722 & 4.*

12th.

If there are three part-owners of a ship, and one of them refuses to navigate the ship, and the other two do it against his consent, and the ship is lost in the voyage; yet he who refused shall contribute to the loss in proportion, as he was entitled to have an account of profits, had there been any. *Strilly and Winson, 1 Vern. 297.*

13th.

Two persons agreed for the purchase of an estate in moieties between them, which estate was subject to several incumbrances, which were to be discharged out of the purchase-money; one of them had abatements made to him by some of the incumbrancers of several sums due for

for interest, and otherwise, which they, in consideration of services and friendship, agreed should be to his own use; yet on a bill brought for an account for the rents and profits, the court would not allow him the benefit of these abatements, exclusive of the other; but held, that he must account for them, the purchase being made for their equal benefit, and on a mutual trust between them. *Trin. 1728. at the Rolls, Carter and Horne.*



What Matters are proper for an Account; who may and may not bring a Bill for that Purpose, and against whom such Bill lies.



1st.

A Bill being to come to an account for several sums due to defendant from plaintiff upon several securities, amongst which were two judgments, one in battery and another for words, suggesting that most of the debts were paid. Lord chancellor ordered that they should go to an account, but that no interest should be allowed on the judgments though they had been long due. *Easter, 1678. 2 Freem. rep. 37.*

2d.

Where an executor has an express legacy, equity looks upon him as a trustee, and will make him account for the surplus, though the spiritual court has no such power. *Mich. 1695. Petit and Smith in B. R. 1 Will. rep. 7. Comb. 7. Com. rep. 3. Ld. Raym. 86. 1 Stra. 568.*

3d.

In an account both parties are actors; and therefore a *ne exeat regnum* lies for a defendant in an account against a co-defendant. *Per Harcourt lord chan. 1 Will. rep. 263.*

4th.

A. pretending he had a term of sixteen years to come in an house, B. agrees with him for the sale thereof, and pays 100*l.* part of the consideration money down, and the rest was to be paid at another day. B. enters, but finding that A. had only a term of six years in the house, brings his bill to have an account, his money refunded, and his bargain set aside. B. decreed to account for the profits, and the consideration money to be refunded, and B. upon his account to have tenant allowances made him. *Trin. 7 Ann. Long and Fletcher, MS. rep.*

5th.

A master of a ship goes a trading voyage, and dies, successor

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cessor possesses his effects, and then sends a letter with a bond enclosed to the widow to be answerable for 300l. if the ship arrives safe; the sum the deceased left being 200l. which was the rate of respondentia bonds. This master trades and makes 300l. per cent. of the money. Decreed *per Harcourt* Ld. Keep. that the successor was trustee, and should account with plaintiff, the widow of the first captain, for the profit made by the trade, deducting reasonable allowance for labour and skill. costs reserved. *Brown and Litton, East. 10 Ann. Lucas's rep. 20. Post 722. cap. 102. S. C.*

6th.

Where an executor puts out money, though without the indemnity of a decree, upon a real security, which there was no reason then to suspect, but afterwards such security proves bad, he is not accountable for the loss, any more than he would have been entitled to the profits, had it continued good. lord keeper *Harcourt's* opinion in the above case, 1 *Will. rep. 141.*

7th.

If a trustee empowered to put money to interest let it lie by him, he shall be accountable for interest. Said by lord keeper *Harcourt, East. 1711. Lucas's rep. 21.*

8th.

And the same reporter says, lord keeper seemed of opinion, that if a trustee trade with money, he should be accountable not for interest only, but the profit of the trade, and that at his peril, because he acted without the directions of the court. *Ibid.*

9th.

T. having lent D. several sums of money, amounting to 600l. D. by indenture bargains and sells a sixteenth part in a ship, and by a defeazance it was declared, that this assignment was made to the intent that plaintiff out of the earnings of the ship should pay himself 600l. and after such payment should account to D. of the earnings; but there was no covenant in the defeazance to pay the money. Afterwards the ship was lost, and the plaintiff brings a bill against D.'s executrix to have satisfaction of this debt. Defendant by her answer denies assets præterea to satisfy judgments and debts by specialty. Decreed that defendant

defendant account for the estate of the testator, and plaintiff to account for the said earnings, and to be allowed what sums he expended in fitting out the ship, though she happened to be cast away in the second voyage. *Tyrrel and Lady Thomas, Mich. 12 Ann. Viner's abr. tit. Account (C. a.) pl. 5.*

10th.

Bill by the heirs and residuary legates of A. against his widow and executrix, to have an account of his estate. It being proved that A. being very old and infirm for seven years before his death, did not receive money himself, though he signed receipts and executed leases, &c. but the money was usually paid to defendant. *Cowper C.* decreed defendant to account for what money she received seven years before her husband's death, but that the master should be easy in taking the account, and allow for housekeeping, &c. without vouchers. *Mich. 2 Geo. Buckle and Milman, Viner's abr. tit. Baron and Feme (E. a. 6.) pl. 8.*

11th.

The obligor on payment of 20l. to the obligee, a weak person, procured a bond for 200l. and two promissory notes for 50l. each to be delivered up, and the obligee to execute a release of all demands, upon pretence of nearness of relation, and of being poor; but neither of these considerations were proved. *per cur'*: the payment of the 20l. seems to induce a suspicion (there being no notice taken at that time of what sums were due either on the bond or notes) that the payment was the only consideration of delivering up the bond and notes, and executing this release; and that the obligee did not know what was due to him, being incapable of transacting his affairs. Obligor decreed to account for the bond and notes. *Lucas executor of R. A. and Adams, Mich. 11 Geo. 1. 2 Mod. ca. in L. and Eq. 118.*

12th.

In the case of *Le Croy and Eastman, Trin. 8 Geo. 1.* The question was, whether a trustee of south-sea stock should answer to the value of the stock when sold by him, or only be accountable for the stock and dividends? resolved *per Parker C.* that the trustee must only account for the stock and produce, *Lucas's rep. 498.*

13th.

13th.

A creditor cannot bring a bill in equity for an account against one co-executor without the other, nor as residuary legatee. *Hil. 10 Geo. 1. Scurry & Ux' versus Morfe, 2 Mod. ca. in L. and Eq. 89.*

14th.

Where one claims an absolute gift of a personal estate, and at the hearing it plainly appears to be a trust, the court will order him to account. *Ibid. 113. Mitford & al' versus lord Herbert & al' Mich. 11 Geo. 1.*

15th.

On a bill brought for an account of the produce of 20000*l.* South-Sea stock, mortgaged by plaintiff to defendant, (and after principal and interest paid) to be paid the ballance. at the hearing an issue at law was directed; but upon appeal to the lords, the order was repealed, and an account directed for all monies received on the sale of the pledged stock, notwithstanding the day of redemption was past, it not appearing that the defendant had sufficient stock to answer the plaintiff, and after principal and interest satisfied, the residue to be paid, and the stock not sold to be transferred to plaintiff. *Harrison & Hart, Mich. 13 Geo. 1. Comyns 393.*

16th.

If several executors are sued in equity, and one admits assets, yet an account decreed against the rest, for that executor might admit assets, and yet have none, nor any estate of his own. And it would not be reasonable that this should prevent the creditor-plaintiff from prosecuting the others, who may have possessed themselves of part of the estate, and ought to be responsible. Said *per* master of the rolls in the case of *Norton and Turvill, Trin. 1723. 2 Will. rep. 144.*

17th.

Plaintiff who claimed under his father's will, brought his bill (*inter al'*) for an account of the mesne profits of leasehold premises, and had a decree. Then the question was, from what time the account should be taken, whether from the time the title accrewed, or only from filing the bill? *per* lord chanc. *King*: from the time the right accrewed; and

and the rather, because the defendant has concealed the title deeds and writings. *Bennett and Whithead, Mich. 1731. 2 Will. rep. 644.*

18th.

Defendant was master of a ship called the Carteret, in the South-Sea company's service, and owner of a fourth part in her, and in 1733, by deed poll, reciting a wreck of the ships therein mentioned, and the freighting of the Carteret, and that the king of Spain had by letters patent, granted the company liberty to fish for such wrecks. In consideration of 700*l.* paid by plaintiff to the defendant, he assigned over to plaintiff 700*l.* to be issuing out of the fourth part of the Carteret, together with all profits and advantages of his said fourth part, arising from the freight of the wreck of a ship called the ——— and also of a wreck of a ship lost on the coast of Brasil, and of a ship lost on the island of ——— called the ——— an East-India man, after all just deductions and allowances made; the defendant covenanted to warrant to plaintiff his share, and it was agreed that the said 700*l.* should be liable to all losses and gains on account of the said intended voyage. The defendant carried several contraband goods in his ship, and the plaintiff brought his bill to have an account of the freightage of all the goods he had carried in that voyage. His honor decreed a general account, as well of those which were contraband as the others. From this decree the defendant appealed, and it was insisted for him, that if the ship had been forfeited for such false trade, yet the plaintiff would not have been contributory to the loss, and therefore ought not to be a gainer by such clandestine freightage. But *per King C.* it ought not to be in the defendant's power to expose the ship to a forfeiture, much less ought he to have the advantage of such unfair dealing; and so affirmed the decree. *East. 6 Geo. 2. Dr. Dover and Opey, MS. rep.*

19th.

Equity will decree money overpaid in pursuance of an usurious contract, to be accounted for notwithstanding the agreement of the oppressed party to allow such payments, and the securities to be delivered up. *Bosanquett versus Dastwood at the rolls; and afterwards affirmed by Talbot lord chan. Mich. 8 Geo. 2, cases Temp. Talbot 38.*

20th.

20th.

The executor wastes the fund for younger children ; this is a *devastavit* in him, for which he shall be accountable ; but the younger children have no remedy over out of the real estate, as there was a sufficient personalty, or would have been, had it not been for the executor's wilful neglect. *Morgan and Morgan, before the house of lords, 21 April, 1736.* It would be hard to make the corruption or negligence of the executor work to the hurt of the heir, who is an innocent party. *Grounds and rudiments of L. and Eq. 68.*

21st.

Where an attorney's bill has been taxed at law, equity will not decree an account, which would tend to overhale the taxation ; for in case the prothonotary does not make all just allowances, the court will refer it back to be reconsidered. *Osbaldiston and Crofts & al', Hil. 11 Geo. 2. in Scacc', Comyn's rep. 612.*

22d.

Where the child of a freeman of London is to make his election whether he will abide by the will or by the custom, he is not obliged to elect till after the account taken. 3 *Will. rep. 124, in a note.*

23d.

Goods are assigned to plaintiff for securing a debt, the assignor afterwards becomes a bankrupt, and his assignees possess themselves of the goods. The bill was brought against them for an account ; defendants demur, for that this matter was relievable at law ; *sed non allocatur* ; for though plaintiff might bring an action of trover, yet as the goods were assigned by way of security, there is matter of account, and therefore plaintiff is proper in taking his remedy in equity. *Ryal and Roberts, East. 1740. Barnard. eq. rep. 38.*

24th.

In a bill for an account, all persons who have possessed themselves of the testator's estate ought to be made defendants. *Hil. 1740. Barnard. eq. rep. 332.*

Matters to be brought into the Account, what shall be allowed or discounted, where an accountant may charge or discharge himself, and how the particulars are to be ascertained.



1st.

IF a mortgagee or trustee manage the estate themselves, there is no allowance to be made them for their care and pains; but if they employ a skilful bailiff, and give him 20*l.* per annum, that must be allowed, for a man is not bound to be his own bailiff. *Per Cur^r. Easter 1685, Bonithon and Hockmore. 1 Vern. 316.*

2d.

One deviseth 250*l.* to his son, and makes his wife executrix, who marries another husband; in a bill brought against them for the legacy by the son, the defendants would have discounted maintenance and education, which the court would not permit; for it was said that the mother ought to maintain the child; but a sum of money paid for the binding of him apprentice was allowed to be discounted. *Mich. 33 Car. 2. Anon. 2 Vent. 353.*

3d.

The plaintiff came as a guest to the defendant's house, at her invitation, and the defendant insisted on 5*l.* a week for diet and lodging, alledging, that she being a person of quality, and courted by several noblemen, much was spent in entertainments, and prayed it may be allowed her in account; but lord chancellor said, it was no honorable demand, and decreed an account without any allowance, it appearing that she came at her invitation. *Arundell and Roll, Mich. 1681. 1 Vern. 19.*

4th.

A marriage settlement was to all the sons of the marriage in tail mail successively, and for want of such issue, to the daughters, till the person next in remainder should pay them 3000*l.* on failure of issue male, the possession
came

came to the daughters, who insisted that they should hold the lands until the remainder-man thought proper to determine their estate by one entire payment; but on a bill brought by the judgment-creditors, who insisted to be let into a satisfaction subject to this charge, and in exoneration thereof, to have an account of the rents and profits, it was decreed at the rolls, that they should account for the profits, and that the rent should be applied, first to pay the interest, and then to sink the principal, as in case of a common mortgage; which decree was confirmed by lord chancellor, with this variation, that the principal should not be sunk by small payments; but when a third part was raised beyond the interest then due, it should go to sink the principal; and so again when another third part was raised, &c. *Mich. 1706. Blagrove and Clunn, 2 Vern. 523.*

5th.

It was insisted (and not denied) to be a custom between merchant and merchant, that all accounts should be evened on either side, by way of estoppel, especially when the business is of the same employment. *2 Chan. Ca. 7.*

6th.

The defendant had a bond from the plaintiff for 50*l.* in 1684, and in 1685 the defendant lodged and dieted with the plaintiff, and in 1699 the defendant brought an action at law on the bond against the plaintiff, who brought this bill to have a discount for the diet and lodging; and though there was no agreement for that purpose, and such length of time passed, yet the master of the rolls decreed it to an account, and said, that so it should be if the defendant had been a bankrupt, the plaintiff should have had a discount against the commissioners or assignees, and that a discount was natural justice in all cases. *Hil. 1999. Arnold and Richardson.*

7th.

So where two persons had mutual dealings, but before their accounts settled, one of them died, and the survivor brought a bill against his executors, to have an account; and that the plaintiff might discount what he was to pay out of what the executors were to pay him; and it

it was decreed accordingly, although it was objected, it may make a devastavit in the executors. *Mich. 1701. Beaumont and Grover.*

8th.

The plaintiffs were assignees under a commission of bankruptcy awarded against sir J. B. and brought this bill against the defendants, to compel them to transfer to the plaintiffs several shares in the stock, to which sir J. B. was entitled, and which in the year 1720 cost him between 10 and 1200*l*. The defendants, by answer insisted, that sir J. B. was one of the directors of their company, and in the year 1720, after his purchase of the before-mentioned stock, the company lent him about 12,000*l*. and insisted, that they ought not to be obliged to let the plaintiffs transfer or dispose of the interest which sir J. had in their stock, without payment of the 12,000*l*. borrowed, and that by virtue of the act 5 *Geor. 1.* one account ought to be set off against the other; and for that purpose they had come in as creditors under the commission of bankruptcy, and had proved their debt; there was no pretence that the money was lent on the security of the stock, which sir J. had in their company at that time, that they lent him this money, and therefore would now stop his stock till the payment thereof, or as far as the value of the stock would extend, which now by the great fall of stocks would by no means satisfy their debt; but it was decreed at the rolls, and that decree on an appeal affirmed by the lord chancellor, that the defendants ought to permit the plaintiffs, the assignees, to transfer and dispose of the stock for the most they could make of it, and that they could not stop or retain the stock for their satisfaction, either before or by virtue of the statute 5 *Geor. 1.* And it was resembled to the case of the lord of a manor and his copyholders, that the lord could not refuse to admit a person to whom one of the copyholders had sold his estate, on account of any debt due to the lord by that copyholder; that as the lord of the manor in that case, though he had the freehold of all the copyhold estates in him, yet he had no right to any of the copyholders private copyhold; so here, though the company had the whole stock of the company in them in their corporate capacity, yet the stock of each proprietor was distinct, and only vested in himself, wherewith the company had nothing to do further than they were invested therewith by the charter, or

act of parliament wherewith they were incorporated and empowered, or ordered to transfer each one's stock by transfers to be made in the books of the company; which otherwise every proprietor might by deed, or otherwise, have transferred as he thought fit. And it was held, that this case from that of the Hudson's-bay company, decreed per lord chancellor, assisted by Raymond C. J. and Mr. Justice Price, where there was an express by law to subject the stock of each member to satisfy the debts they should owe to the company. And it was said, that this was not like the case of Demandray and Metcalf, where a banker lent 200*l.* on a pledge of jewels, and afterwards lent the same person a further sum of money on his bare note; yet he was not permitted to redeem the jewels without payment of the note likewise; for there it was between two private persons. And it was held not to be within the statute of 5 *Georg.* 1. which speaks only of mutual dealings and accounts, which is not in this case, as sir J. had a fixt permanent interest in the stock, and the money borrowed without regard thereto. And the court held this was not like the case of partnership, where if any of the partners borrowed any of the partnership's money, his own share should be answerable for it, and he should not be permitted to come into a court of equity, and pray an account of his share of the partnership stock and effects, without making satisfaction for the debt he owed the partnership; for this was a transaction between them as private persons, and on a mutual credit and trust; but the loan of the 12,000*l.* in the present case to sir J. was not in their corporate capacity, wherein only he stood related to them, and held his stock, but was a loan by them as private persons, for which they could not stop his stock, which he held as a member of the company in their corporate capacity. *Trin.* 1728. *Meliorucci and Royal Exchange Assurance Company.*

9th.

Colonel R. married the daughter of lord N. and G. who was executrix of her husband, and kept a book of accounts relating to his estate, and after she married R. the same book was kept and continued on. After he went over governor of Barbadoes, and his wife went with him, as did the servant that made and kept the book of account: and there was proof in the cause, that the book was made up from vouchers, and had paid great part

part of the monies: and the witnesses believed all the other monies were paid, and the plaintiff charged the defendant only by the book; and upon exceptions taken to the master's report, the question was, whether the master ought not to have allowed the book as a discharge as well as a charge; and after long debate, my lord keeper adjudged it should be allowed as a discharge; and the rather in this case, because colonel R. his lady, and the servant, were dead in Barbadoes, which amounted to length of time, which was always held a good reason for allowing of it, and so took it to be a good rule, and fit to be established, that where a man was charged only by an oath, or a book, the same shall be his discharge, and the case of Mellish and Turner, lately adjudged, was cited, where books had been lost in the earthquake at Smyrna, so that the plaintiff could only charge the defendant T. by his own books, the same books were admitted to be his discharge. *Mich. 1701. Darstton and Earl of Oxford & al' executors of colonel Ruffel.*

10th.

The defendant was a house-keeper, and her aunt, who was a very old infirm woman, lived with her, and she from time to time received the aunt's money for her, as any was paid; the aunt died intestate, and the plaintiff being entitled to a distributive part of her estate, brought a bill against the defendant, to discover what sums of the intestate's money she had received for the intestate whilst she lived with her, and at what time, and that the intestate immediately put them out again at interest, to such particular persons, and set forth other sums which she had received and paid over to the intestate. The cause being heard without proof on either side, and an account decreed, which was referred to a master, he by his report charged the defendant with the sums confessed by her answer to be received, and submitted to the court, whether she was not likewise to be discharged by the same answer. The master of the rolls said, that though he looked on the defendant in this case to have acted only in the nature of a servant, who by the justice of this court may, on a bill brought against him by his master's executors, discharge as well as charge himself by his answer; yet as the defendant might in this case have proved an answer, as appears by the answer itself, and had not done so, he referred it back to the master, and

and each side to make what proofs they could; and he declared, that if the answer was disproved, as to the sums put out at interest, he should give no credit to it as to other particulars, else inclined it should be a discharge too, as well as a charge. *Trin. 1702. Bayly and Hill.*

11th.

An account being of twenty years standing, it was ordered that the defendant may prove on oath, what he cannot prove by books and cancelled bonds, it being of so long a standing. *Peyton and Green, 1 Chan. Rep. 146.* An account of fourteen years standing admitted to be proved by oath. *1 Chan. Ca. 127.*

12th.

The court will not allow any thing to be placed to account under the head of general expences; but the party must name the particulars. *Nel. Chan. Rep. 117.*

13th.

The defendant, on account, shall be discharged by his oath of sums under forty shillings, but a party shall not, by way of charge, charge another person so. *2 Chan. Ca. 249, Everard and Warren, Hil. 30 & 31 Car. 2. 1 Vern. 283. Mich. 1684,* in an anonymous case, S. P. where it is said, that he must mention to whom paid, for what, and when; *vide 1 Vern. 470.* where it is said, that the court being informed, that the course of the court was, that an accountant was to be allowed, on his own oath, all sums not exceeding forty shillings each, so as the whole was not an 100*l.* Declared that the rule seemed very unreasonable, and would consider how to rectify it. *Trin. 1687. Whicherly and Whicherly, 1 Vern. 470.*

14th.

In an account between plaintiff a gardener, and defendant a seedsman, the defendant shall be allowed sums under forty shillings, by way of discharge, upon his oath; but the plaintiff shall not be allowed any thing on his oath. *Marshfield and Veston, 2 Vern. 176.* *This is now the established practice in Chancery.*

15th.

A prays to have an account of the sale of goods taken in execution at an undervalue; the defendant pleads, that

that before he bought the goods of the sheriff, and afterwards, they were offered to the plaintiff for the same price he gave for them; and the plea was allowed good. *Hil. 25 Car. 2. Dean and Gavell & al', Rep. Temp. Finch. 111.*

16th.

An account was decreed between the plaintiff and defendant; and it being proved, that the defendant had altered a bundle of papers; and it being likewise reported by the master, that he had suppressed the evidence; the lord chancellor disallowed the defendant's whole demand, though he swore he had produced all the papers; and his lordship declared he was satisfied, that all the papers were produced. *Wardour and Beresford, Pasc. 1687. 1 Vern. 452.*

17th.

The bill was to call the defendant, plaintiff's steward, to an account; the defendant by way of plea insisted, that the plaintiff had sued here, and also at law, for the same matter, and having her election, she chose to have her bill dismissed here, and not meeting with success at law, she now resorts back again to this court; that the plaintiff had seized in violent and undue manner all his writings and evidence, and likewise imprisoned his person: the court held, that a dismissal upon election was no more peremptory than a non-suit at law; and that as to the taking of the papers, though detain of charters is a good plea at law to an account; yet to say that the plaintiff did once seize his writings, is not good; and as to the imprisonment, he may bring his action; and therefore ruled, that the defendant should answer; but ordered, that whereas there was a considerable sum of money in the trunk, that the money as well as writings should be restored; for though the defendant may be greatly in the plaintiff's debt, yet she must not levy her own debt after that manner. *The countess of Plymouth and Bladon, 2 Vern. 32.*

18th.

Though an account be stated under hand and seal, yet if there appears any mistake in it, the court will order the parties to go to a new account. *3 Chan. Rep. 18. Proud and Combes, 15 Nov. 16 Car. 2.*

19th.

19th.

The defendant's testator stated an account with the plaintiff, which was signed by the parties; but the plaintiff afterwards finding that his servant had paid 200*l.* for which he had no credit given him, prayed a new account against the executor, who pleaded the former account stated, and that he was but an executor, and knew not how to account: the plea was over-ruled, but ordered to proceed no further than answer without leave of the court. 27 *Car. 2. Wright and Coxen, 1 Chan. Ca. 262, Rep. Temp. Hinch. 431, S. P. in Chandler and Dorset, 31 Car. 2. 2. Chan. Ca. 157, S. P. in Osborn and Chapman, 3 Car. 2.*

20th.

A makes a jointure of an equity of redemption, and afterwards becomes a bankrupt; the commissioners assign this equity of redemption, and the assignees state an account. The jointress brings her bill to be relieved, alledging combination between the assignees and the mortgagee, and that they had allowed more money than was due on the mortgage. Lord keeper, the assignees stand in the place of the husband, and the account stated by them ought to be as conclusive, as if stated by the husband; and the bill is not right in charging a general fraud in the stating of the account, but plaintiff ought to have assigned particular errors in the account; however the plaintiff had leave to amend her bill. *Knight and Bamfield, 1 Vern. 179.*

21st.

Mortgagor and mortgagee settle an account before a master; and now a subsequent mortgagee sues for a new account, supposing the former account to be false, and made by consent, but did not insist upon any particulars; and lord chancellor declared, that the account should bind the second mortgagee, if the fraud and collusion were answered. *Trin. 29 Car. 2. Needler and Deble, 1 Chan. Ca. 299.*

22d.

A. is tenant for life of a trust, remainder to his sons. A. before a son born brings a bill against the trustees, and an account is decreed, and afterwards taken; this account shall bind the sons, for all persons that could be made parties were parties to the suit. *Leonard and Com. Suffex, Mich. 1705. 2 Vern. 526.*

23d.

23d.

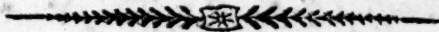
An account taken, and a distribution decreed in the spiritual court, of a personal estate; yet a new account decreed by lord chancellor, *Bissell & Ux^r* and *Axtell & al^r*, Easter 1588. 2 Vern. 47.

24th.

The plaintiff's husband and the defendant had dealings together as merchants; the bill was for an account; and although it was agreed that length of time was no bar, yet the plaintiff's husband living many years after the trade and dealings between them ceased, and acquiescing to the time of his death, the court dismissed the bill, and left the plaintiff to recover at law, if she could. *Sherman and Sherman*, Mich. 1692. 2 Vern. 276.

25th.

Among the merchants it is looked upon as an allowance of an account current, if the merchant who receives it does not object against it in a second or third post. *Per Hutchins*, Id. commiss. in the case of *Sherman and Sherman*, Mich. 1692. 2 Vern. 276.



How an Accountant may discharge himself; what shall be a good Bar to a Demand of an Account; where a stated Account shall be conclusive, and in what Cases it may be set aside; and where a Liberty shall be given to falsify: and here of a Stoppage or setting off mutual Debts one against the other.

1st.

IN an account before the master, the party may discharge himself upon his own oath for any sum not exceeding forty shillings, by lord *Bridgeman* and master of the rolls, 27 October 1672. *Freem. rep.* 136. pl. 168. *Anon.*

2d.

Held unanimously, that where there was an account current, for 20 years as receiver of rents, and much more in paying and receiving mutually, yet this was not barred by the statute of limitation; but if the account were stated or ended, and then the party forbears to prosecute for six years, he is barred. And here *A.* (who was the executor of *Mrs M.* who was executrix of her husband *Mr. M.*) was decreed to account for the profits of lands received by *Mr. M.* before his death, in trust for the plaintiff. *East.* 1680. *in canc.*; *Astrey's case*, 2 *Freem. rep.* 55.

3d.

To a bill preferred generally to an account, an account stated is a good plea; but if the bill sets forth that there was an account, and a mistake, and sets forth the particular mistake, there an account stated is no good plea. By *Hutchins & al'* 2 *Freem. rep.* 62. *Mich.* 1680. *Anon.*

4th.

Account stated is a good plea, but if there be any agreement to rectify mistakes, it shall not conclude, tho' under hand and seal. *Master of the rolls. ibid.* 183 pl. 253-5th.

5th.

The party gives in an account of debtor and creditor, and sets down so much received, and so much paid, which being taken as true, a release is given: *North* l. k. thought it reasonable to relieve against such a release, and let them in to disprove the articles of the account. *Mich.* 35. *Car. 2. in canc.*, *Anon. Skin.* 148.

6th.

On a bill to have an account of the rents and profits of lands, &c. *Harcourt C.* said, that when a person has been ejected at law, and the other party has been in possession above twenty years, and no account demanded or bill filed in that time, the statute of limitation will bar an account in this court, as well as an action of trespass for the mesne profits at law; for *jus possessionis* is gone by the statute, and consequently the mesne profits; and if once the statute begins to attach, incapacity, as overture, &c. will not aid it. This statute does not extend to a trust, but in this case the defendant coming in by a recovery at law, and the twenty years elapsed before the bill filed, the bill must be dismissed *quoad* the account of rents and profits. 13 *Anne. Newarre and Rutton, Viner's abr. tit. Account (D. a.) pl. 7.*

7th.

A receiver to the guardian of an infant, who has settled his account with the guardian, shall not be obliged to account over again to the infant when of age, for the guardians were only and immediately responsible to him, and answerable for the receiver their servant. The receiver pleaded the accounts themselves, and his plea clearly held good. *Calvering's case, Trin. 1720. preced. in chan.* 535. 3 *P. Wms.* 402.

8th.

A. a clothier and B. a dyer had mutual dealings in their way of trade, which were carried on for several years without payment of money on either side, but the debts on one side were paid off against the debts on the other, B. was otherwise indebted to A. and on stating accounts, in 300*l.* for which he made a mortgage, and afterwards owed A. 200*l.* for which he gave bond and judgment; B. dies intestate, and indebted to others by specialties,
I i who

who as principal creditors take out administration, and finding several sums due from A. sue him at law. On a bill by A. *Macclesfield C.* decreed an account, and that A. should be allowed on discount what was due to him from B. and his costs. *Downam and al' versus Matthews and al'*, *Hil. 1721. Preced. in chan. 580. 1 Atk. 228, 236. 1 P. Wms. 325. 2 P. Wms. 128. Black. rep. 653.*

9th.

A. took a nephew upon his father's death into his house, and provided him with cloaths and schooling, and afterwards took him as an apprentice, and in his books kept an account of expences of board, and afterwards left him 500*l.* by will, and made B. executor. After A.'s death, B. supplied the nephew with wines, who likewise received monies due to B. and so became indebted to B. considerably. The nephew sued B. in the spiritual court for the 500*l.* upon a bill brought by B. first against the nephew, and afterwards against the assignees of a commission of bankruptcy against the nephew, and cross bills by them against B. his honour decreed an account, and plaintiff B. to pay only the surplus, after having deducted what is due to the nephew, as well to himself as to the testator, but no costs on either side. *Easter 1723, Jeffs and Wood, 2 Will. rep. 128.*

10th.

Plaintiffs and Fry the intestate were tradesmen, and had mutual dealings together; plaintiffs were indebted to the intestate 30*l.* for paper, and the intestate was indebted to them 100*l.* for sugars. Intestate died insolvent, not leaving assets to pay his debts; defendant takes out administration as principal creditor, and brings an action against L. one of the plaintiffs and partners, for goods sold to him by the intestate, and gets a verdict and judgment thereupon; plaintiffs bring their bill, "suggesting that the intestate was indebted to them as partners in a far greater sum for goods sold and delivered than they were indebted to him, and pray an account; and that deducting the debt due by them to the intestate, they may have satisfaction for the balance of the account out of assets." *Macclesfield C.* decreed that the defendant acknowledge satisfaction upon the judgment, and that an account be taken between the parties, and the balance due to plaintiffs to be paid in a course of administration

administration, but without costs, because the defendant is an administrator. *Mich. 10, in cane, Hawkins & al' and Freeman, Viner's abr. tit. Discount, (A) pl. 26.*—Mr. Viner in a note at the bottom of this case says, “this was an appeal from the rolls, where the bill was dismissed, that decree now reversed, and decreed *ut supra*.”

11th.

Stated accounts by men of perfect ages and understandings, after great length of time not to be set aside against an executor; for *King Id. chan. said*, to have a bill now brought against the executor would be very hard; that the court had gone great lengths in relieving against the statute of limitations, and run into all the inconveniences designed to be avoided; and said, it is much better for the public that one should suffer than all the world be in uncertainty; people should come in a reasonable time. He did not say accounts were conclusive, but it would be very hard to put a man's executor, who knew nothing of the matter, to answer. *Western executor of Western versus Cartwright executor of Cartwright, Trin. 1725. select ca. in chan. 34.*

12th.

After laying out 200,000*l.* of the public money for building Bleinheim house for the duke of Marlborough, he fell into disgrace, and the same was afterwards carried on at his own expence; at that time 45,000*l.* was due to the overseers and workmen, and messieurs A. B. and C. who were employed by the crown, settled their accounts, and paid them 16,000*l.* the sum remaining in their hands of the public money; so 29,000*l.* remained due to the workmen, for which they had a decree against the duke *in scacc'*, which was affirmed in the house of lords. Afterwards the duke apprehending that the account settled with the crown ought not to conclude him, moves to bring his bill for an account of what money the defendants had received for their work, and to know what was due to them in order to be paid; which was granted. The overseer by answer insisted he was to account only with the crown, and having so done, he ought not to account again; and all the defendants said, they took the duke pay-master, &c. It appeared that in the warrant to the overseers to proceed in the work, that they should be accountable to none but the duke, Tho' it

it was argued for the workmen, that it would be hard for them to come to a new account, and to produce vouchers after such a length of time, and that several of the present defendants were widows, children, and other representatives of workmen deceased, and therefore almost impossible for them to produce vouchers for work done by those whom they represent after so long acquiescence under a stated account, by relying whereupon they might be negligent of such vouchers, and might probably have lost great part of them; yet decreed that the officers and workmen shall account, and that the stated account shall not stand in the way. *Marborough Ducheſs and Sir John Vanbrugh or Vanbrook & al'*, *Trin. 9 Geo. 1. 2 Mod. Ca. L. and Eq. 23.*

13th.

Account directed after thirty-three years acquiescence. *Feb. 17, 1724. Lord Kingſland and Lady Tyrconnel, Viner's abr. tit. Account, (D.a.) pl. 10.* But in regard to the reasons the court went upon, the book is ſilent.

14th.

A bill was for an account by A. a merchant againſt B. a merchant who was his partner; defendant pleads, that the dealings concerning which plaintiff prays an account were tranſacted above twenty years before the bill brought; and pleads ſuch acquiescence without ſuit, and alſo the ſtatute of limitations in bar of the account. *Per Cur'*: forbearance of ſuit for twenty years will in equity be a good bar though between merchant and merchant. *Hil. 12. Geo. 1. in ſcacc', Bridges and Mitchell, Gilb. Eq. Rep. 224.*

15th.

Not neceſſary for the defendant in ſuch a bill to aver in his answer, that he did not promiſe within fix years to account, &c. unleſs particularly charged in the bill; as was reſolved in *Bodvil and the biſhop of Meath in ſcacc'*, ſaid *per cur*, in the above ſaid; *ibid. 225.*

16th.

In a decree of foreclosure againſt an infant, though he hath fix years after he comes of age to ſhew cauſe againſt the decree, yet he cannot ravel into the account. This point clearly laid down by *Talbot C.* as agreeable to the conſtant practice. *Mallack v. Galton, Hil. 1734. 3 Will. Rep. 352.*

17th.

17th.

Just and fair accounts, which appear so in themselves, settled with an infant, after he comes of age, and after length of time and the death of both parties, shall not be opened. *Hil. 1740, Vernon and Vandrey, Bernard. Eq. Rep. 283, 305.*

18th.

But when an account is settled, which in the very nature thereof is fit to be opened, as where interest is carried into principal, and other impositions appear by the *items*, in such case notwithstanding length of time and the party's death, equity will entirely set aside the account; but with an exception as to those *items* that contain gross sums advanced upon securities, and goods bought, but even as to them liberty will be given to falsify. *Ibid. 305, 306.*

19th.

A. by bill prays relief and a discovery against B. and proceeds at law upon the same account. B. prays that A. may make his election which court to proceed in. A. elects to proceed at law, but has leave to proceed here also with regard to so much of his bill as sought a discovery. A. amended his bill on payment of costs, by striking out that part which tended to pray relief: thereupon the bill was dismissed of course, because that it prayed only a discovery, and B.'s costs taxed to 38l. A. gets judgment at law for 440l. for which B. was taken in execution, but at the same time B. takes out an attachment against A. for said 38l. costs. A. petitions that he might deduct the 38l. out of the 440l. *Id. chan. said*, the petition seemed to him to be very reasonable, and that he would grant it if the precedents would justify it, which he doubted, because the bill of discovery was dismissed, therefore he made no order, but directed it to stand over that plaintiff might search for precedents. *Hil. 1740, Geerish and Donaccon, Bernard Rep. in chan. 428.*

20th.

Where there are only mistakes in an account, equity (whilst both parties are living) will only give liberty to surcharge and falsify; but where there are impositions, will set aside the account entirely. — And though a charity is not barred in equity to the statute of limitations, yet that seems to be a good rule how far back to carry the account. *MS. Notes.*

BILLS

BILLS *against* FRAUD and COLLUSION.

A Bill to set aside a Fraudulent Will.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY, &c. sheweth, &c. your suppliant W. L. citizen, &c. that I. D. late of, &c. widow, having left her by the will of L. D. her late deceased husband, the sum of one thousand four hundred pounds, in ready money, all his plate, household-goods, and all manner of utensils of household stuff, over and above his debts, which amounted in the whole to upwards of four thousand pounds, of lawful money of Ireland, or some such great sum of money, to dispose of as she pleased, amongst her own relations, who departed this life on or about, &c. as by the said will of the said L. D. now remaining upon record in the prerogative court of this kingdom, and to which your suppliant for the greater certainty refers himself, will more at large appear: and your suppliant farther sheweth, that the said I. D. having made a considerable improvement of the estate so left her by the said L. D. her deceased husband, as aforesaid, and being conscious to herself, that it was the desire of her said husband, that the estate so left her by him, as aforesaid, should go to her nearest relations after her the said I. D.'s decease; she the said I. D. did about the month of February or March, which was in the year of our Lord, one thousand seven hundred and eighty nine, send to your suppliant by one of her servant maids, desiring your suppliant to come to her, being sensible she drew towards her end, and that she had no other relation but your suppliant in being, and that

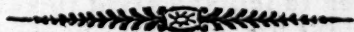
that she was obliged in conscience, and by the will of her deceased husband, to leave all, or the greatest part of her estate to your suppliant, as her next and nearest relation, your suppliant being her cousin german, and make him your said suppliant, executor of her last will and testament; the which the servant so sent by the said I. D. to your suppliant, as aforesaid, often repeated to your suppliant, and that she came to your suppliant in point of conscience, by order of her mistress, who thought herself obliged in conscience, to leave the greatest part of her estate to your suppliant, and make him your said suppliant, executor of her last will and testament, which she was then desirous to make, and ordered your suppliant to bring a person along with him, that was qualified for that purpose; and thereupon your suppliant did immediately go and see the said I. D. his kinswoman, and brought with him a person qualified for making her last will and testament, according to her desire, who received your suppliant very kindly, and as a token of her kindness and affection for your suppliant, she the said I. D. did not only at that time present and give unto your suppliant, the watch of her deceased husband L. D. but also desired your suppliant to request the man he brought with him, to take instructions for the making of her last will and testament in writing, which was accordingly done and approved of by the said I. D. who did not only at that time, in the presence of her maid-servant that then attended her by the name of C. S. give your suppliant an account of what money she the said I. D. had then in the house by her, being several hundreds of pounds, desiring him to tell over the same, but also a full account of her debts and other estate, and of a parcel of single money which she the said I. D. had then in the house by her, which single money your suppliant was desired by the said I. D. to give and distribute among the poor of the parish where she the said I. D. lived, as he your suppliant should think fit, after she the said I. D. should depart this life; and then desired your suppliant to get the instructions that were taken for her last will and testament, to be engrossed fair, in order to her executing of the same, and thereupon your suppliant at that time took his leave of her the said I. D. leaving her to the care and charge of her maid-servant C. S. and afterwards, viz. on or about the tenth day of March, which was in the year of our Lord, one thousand seven hundred and eighty nine, your suppliant, together with the person who took instructions

instructions for the drawing of her the said I. D.'s last will and testament in writing, did go to the said I. D. with a draught of her said will, which was read over to her, and approved of by her, in the presence of her maid-servant C. S. and several other persons; by which will the said I. D. did bequeath to her maid-servant C. S. and several other persons, several considerable legacies, and left your suppliant her sole executor, as by the draught of the said will, so approved of by the said I. D. as aforesaid, now remaining in your suppliant's custody, and ready to be produced to this honorable court, will more fully and at large appear: and your suppliant further sheweth, that the next day after the draught of the said I. D.'s will was approved of by the said I. D. your suppliant and the person that drew the said will, went to the house of the said I. D. with the will engrossed fair, in order to have the same executed by the said I. D. but the said C. S. the maid-servant of the said I. D. pretended to your suppliant, that her mistress was then asleep, and desired your suppliant to leave the said will with her, and she would undertake to get it executed by the said I. D. who was to keep the same by her until the time of her death, and thereupon your suppliant did leave the said will with the said C. S. not doubting but that she would get the same executed by her said mistress, and the rather for that she the said C. S. had a very considerable legacy left her by the said I. D. and more than could reasonably be expected by any servant that was no relation. BUT SO IT IS, may it please your lordship, that the said C. S. having gotten the will so to be executed by the said I. D. as aforesaid, into her custody, immediately sent for her mother, and several other relations of her the said C. S. to be with her in the said I. D. her house, and from that day to the time of the death of the said I. D. would never permit your suppliant to see her, notwithstanding she well knew your suppliant was the nearest relation the said I. D. her mistress had in being, and of the great kindness and affection that she had to your suppliant, notwithstanding your suppliant went several times to see his kinswoman before her death: but the said C. S. entering into a combination and confederacy to and with P. G. and several other persons, debtors to the said I. D. as by the said several bonds remaining now in the hands of the said C. S. or some other of the confederates, and to which your suppliant for the greater certainty refers himself, when produced, will more fully and at large

large appear; and to and with several other persons unknown, whose names, when discovered, your suppliant prays may be made parties to this his bill, with apt words to charge them, with an intent to defeat and defraud your suppliant of the greatest part of the said I. D. her estate, she the said C. S. by the advice of some ill-minded persons, as your suppliant hath just ground to believe, and doubts not but to prove and make out to this honorable court, did cause a will to be made, by the said will which your suppliant left with her to be executed by the said I. D. and made herself executrix therein, and caused the said I. D. to execute the same, instead of the will your suppliant left with her to be executed, wherein your suppliant is left the said I. D.'s sole executor; and five or six days before the said I. D. was buried, if not before the breath was out of her body, went to the prerogative office and proved the said will, as the last will and testament of the said I. D. without giving your suppliant any manner of notice thereof, so that your suppliant could not by any means enter any caveat, or prevent the probate of the said fraudulent will, so obtained by the said C. S. as aforesaid: and the said C. S. by virtue of the said fraudulent will, hath possessed herself of the whole real and personal estate of the said I. D. consisting most of it in ready money, plate, jewels, bills, bonds, leases, judgments, extents, mortgages, and all manner of household-goods, amounting to the value of four thousand pounds, or some other great sum of money, without taking any manner of notice of your suppliant, or giving your suppliant any account of the same, pretending your suppliant had only ten pounds left him by the said fraudulent will, and that the said I. D. would have done better for your suppliant, had not your suppliant misbehaved himself; when in truth, the said C. S. well knows the contrary, and that your suppliant never any ways disobliged the said I. D. in her life-time, and that your suppliant was never permitted to see the said I. D. his kinswoman, after he left the said will to be executed by her, as aforesaid: **ALL WHICH TRANSACTIONS AND DOINGS** of the said confederates, are contrary to equity and good conscience, and tend to your suppliant's great wrong and apparent damage, *in tender consideration whereof*, and soasmuch as your suppliant hath no relief against the fraudulent proceedings of the said C. S. but before your lordship in this honorable court, where frauds and cases of this nature are properly relieved;

able; and the rather for that your suppliant wholly relies upon the oaths of the said C. S. and the rest of the confederates when discovered, for an ample and full discovery of the premises, who, when called thereto, your suppliant well hopes, and doubts not but that they will set forth and discover. **TO THE END THEREFORE**, that the said C. S. may upon her several and respective corporal oaths, set forth and discover, whether the said I. D. did not in her life-time, send for your suppliant and own him to be her nearest relation, and declare, that in point of conscience she was obliged to leave him the greatest part of her estate, and leave him to be executor of her last will and testament, and whether she did not then in token of her kindness, give your suppliant her husband's watch, and order some person to take instructions for the drawing her will, and whether your suppliant did not bring a scrivener along with him, who took instructions and drew her will, and whether the same was not read over and approved of by the said I. D. and whether she did not then give your suppliant an account of her estate, and order your suppliant to tell over the money in the house, and to distribute a parcel of single money she had by her, amongst the poor of the parish where she lived, after her decease, and whether she did not then declare your suppliant her sole executor, and whether your suppliant with the scrivener that drew the will of the said I. D. did not come with the will fairly engrossed, in order to have the same executed, and whether she did not then pretend her mistress I. D. to be asleep, and whether your suppliant did not leave the will with her for her mistress to execute, and whether she would ever after permit or suffer your suppliant to see the said I. D. his kinswoman, and how she got the fraudulent will executed, and who were her advisers therein, and whether she did not carry the same into the prerogative office, and prove it before the death of the said I. D. or how long after; and that the said C. S. may set forth what gold, silver, plate, rings, jewels, bills, bonds, leases, mortgages, judgments and extents, household goods and utensils of household-stuff, at the time of the said I. D.'s making such will, and your suppliant executor thereof, as is herein before set forth, was in the house of the said I. D. and what part thereof was removed before the death of the said I. D. and what after her death, and by whom the same was removed, and where, and what part is still remaining in the house where the said I. D. died, and annex
a schedule

a schedule to her answer of the same, and thereby set forth the whole estate of the said I. D. both real and personal, with the particulars and true values thereof, and wherein the same consisted, and that she may be compelled to bring into this court, the will your suppliant left with her to be executed by the said I. D. his kinswoman, and that she may shew cause, if any she can, why the estate of the said I. D. should not be decreed to your suppliant, pursuant to the said will, and that the said C. S. and P. G. and the rest of the confederates and debtors to the said I. D. in her life-time, may severally set forth what sum and sums of money, they and every of them, stand indebted for principal and interest to the estate of the said I. D. and how much for interest, and shew cause if they can, why the same should not be brought into this court: and that the rest of the confederates when discovered, may answer all and singular other the premises, as if particularly interrogated, and that your suppliant may be relieved therein, by the decree of this honorable court, according to equity and good conscience. May it please your lordship, &c.



A Bill for the fraudulent Sale of an Office.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship, your suppliant H. K. of, &c. gentleman, that about the month of April or May last, in the year of our Lord, one thousand seven hundred and ninety two, B. W. of R. in the county of A. gentleman, and L. T. of &c. insinuated themselves into your suppliant's company, your suppliant being altogether a stranger to them, at which time the said B. W. pretended himself to be store-keeper of the town of L. and other adjacent towns in the said county of A. and that he the said B. W. held the same by some grant or deputation from sir T. B. late of the city of K. in the said county of A. knight, deceased, who the said B. W. pretended to be alive, and that he was judge of the court of saint Patrick, which court he alledged was monthly held in the said city of K. and that the said court was the most ancient court of record in the kingdom of Ireland: and the said B. W. did farther insinuate to your suppliant, that he the said B. W. had by virtue of such grant or deputation from the said sir T. B. as aforesaid, power to sell and grant to your suppliant, or any other person, for life, the store-keeper's place for the town of L. and other adjacent towns, and that the same was a place of great credit, and pretended it would be worth one hundred pounds per annum to your suppliant for life, or any other person that would purchase it of him the said B. W. and the said L. T. at the same time, did pretend himself to be an officer belonging to the said B. W. as he was store-keeper of the town of L. and other adjacent towns in the said county of A. and averred to your suppliant, that the said store-keeper's place was of a greater value than what was pretended by the said B. W. alledging that the said place would be a very fit and creditable employment

ployment for your suppliant; and thereupon your suppliant having been lately married, and being willing to settle himself in some good employment, and giving credit to the fair speeches and pretences of the said B. W. and L. T. believing what they said to be true, and that the said sir T. B. was then living, and that the said B. W. had by virtue of some deputation or grant from the said sir T. B. power to sell and dispose of to your suppliant, for and during the term of your suppliant's natural life, the store-keeper's place of the town of L. and other adjacent towns in the said county of A. and that the same place or employment might be worth the yearly value of one hundred pounds or thereabouts, your said suppliant did thereupon treat with the said B. W. about the purchase of the said store-keeper's place, and after several meetings had, and that your suppliant had been put to great expence by such meetings, your suppliant and the said B. W. did come to an agreement for the said store-keeper's place for the town of L. and other adjacent towns in said county of A. by which agreement, for and in consideration of the sum of forty five pounds, to be paid by your suppliant to the said B. W. the receipt of which is since acknowledged by the said B. W. and five pounds more to be paid or secured to the said L. T. the pretended officer belonging to the said B. W. in all the sum of fifty pounds, the said B. W. did undertake to sell and secure unto your suppliant, for and during the term of your suppliant's natural life, the store-keeper's place for the said town of L. and other adjacent towns in the said county of A. and did undertake and promise, that he the said B. W. would in your suppliant's own name, at his own proper charge, and for your suppliant's use, procure a grant or deputation, from under the hand and seal of the said sir T. B. for the said place or office, and not only deliver the grant or deputation from under the hand and seal of the said sir T. B. to your suppliant, as aforesaid, but also to put your suppliant into the quiet possession of the said place or office of store-keeper's place for the said town of L. and other adjacent towns in the said county of A. and thereupon your suppliant did pursuant to the said agreement, seal and deliver unto the said B. W. one bond or obligation, in the penalty of one hundred pounds, or some other great penalty, for the true payment of forty five pounds, of lawful money of Ireland, to the said B. W. his executors, administrators or assigns, at a certain day then to come, and now long
since

past, as by the said bond or obligation, had your suppliant the same to produce, and to which your suppliant for the greater certainty therein, refers himself when produced, will appear; and your suppliant did also at the same time, or within some short time after, seal and deliver unto the said L. T. the pretended officer of the said B. W. one bond or obligation in the penalty of ten pounds, or some other penalty, for the true payment of five pounds, of lawful money of Ireland, to the said L. T. his executors, administrators or assigns, at a certain day then to come, and now long since past, as by the said bond, writing or obligation, had your suppliant the same to produce, and to which your suppliant for the greater certainty refers himself when produced, will more fully and at large appear; which said sums of forty five pounds and five pounds, are the consideration money that your suppliant was to pay for the store-keeper's office for the town of L. and other adjacent towns in the said county of A. and your suppliant farther sheweth unto your lordship, that within some short time after your suppliant's entering into such bonds or obligations, as aforesaid, the said B. W. and several other persons on his behalf, did apply themselves to your suppliant's friends and near relations, and desired them to persuade your suppliant, to speed the payment of the said forty five pounds to the said B. W. and five pounds to the said L. T. for the payment of which, your suppliant had given security by bonds or obligations, as aforesaid, alledging that the sooner your suppliant entered upon the said place or employment of the store-keeper's office aforesaid, it would be the more for your suppliant's advantage, and insisted that the said B. W. had an opportunity at that time to get a grant or deputation in your suppliant's name, and for his use, for the term of your suppliant's natural life, for the store-keeper's place for the town of L. and other adjacent towns in the county of A. from the said sir T. B. and thereupon your suppliant did forthwith repair down to the house of the said B. W. at L. in the said county of A. and paid him twenty pounds, in part of the said forty five pounds; and your suppliant did within some short time after, pay unto the said B. W. at the sign of the Queen's-head inn, in Bride-street, Dublin, the sum of fifteen pounds more, of good and lawful money of Ireland, in part of the said forty five pounds, which your suppliant had by bond or obligation obliged himself to pay unto the said B. W. for the said store-keeper's office; and your suppliant

suppliant did within some short time after, pay unto the said B. W. and L. T. fifteen pounds more of lawful money of Ireland, which made up the sums of forty five pounds and five pounds, in all the sum of fifty pounds, which your suppliant was to pay for the purchase of the store-keeper's place or office for the town of L. and other adjacent towns in the said county of A. for and during the term of your suppliant's natural life; and the said B. W. and some of his companions, did at the same time importune your suppliant to drink with them, and after hard drinking of wine and other strong liquors, the said B. W. did persuade, and prevailed upon your suppliant to buy of him the said B. W. his horse and accoutrements, at the rate of sixteen pounds, which your suppliant was to pay in some short time after, and for the securing the payment thereof to the said B. W. his executors, administrators or assigns, your suppliant was at the same time, drawn in to enter into some bond or obligation, in the penalty of thirty two pounds, or some other great penalty, for the true payment of the said sixteen pounds, at a certain day then to come, and now long since past, as by the said bond or obligation, had your suppliant the same to produce, and to which your suppliant for the greater certainty refers himself, when produced will more fully and at large appear; notwithstanding the said horse, bridle, and other accoutrements, was not then worth above four or five pounds at the utmost, neither could your suppliant make more of them by sale or otherwise: and your suppliant farther sheweth unto your lordship, that the said B. W. did before several credible persons, upon receipt of the forty five pounds, so paid him by your suppliant, as aforesaid, and five pounds paid by your said suppliant, upon account of the bill or bond entered into by your suppliant to the said L. T. as is herein before set forth, in all the sum of fifty pounds, of lawful money of Ireland, paid by your suppliant for the purchase of the said store-keeper's place for the town of L. and other adjacent towns in the county of A. for and during the term of your suppliant's natural life, faithfully promise your suppliant, that he the said B. W. would within two or three days then next after the receipt of such money so paid him by your suppliant, as aforesaid, not only bring and deliver unto your suppliant, a deputation from under the hand and seal of the said sir T. B. for the store-keeper's place aforesaid, for and during the term of your suppliant's natural life, and put
your

your suppliant into the quiet possession of the same, but also deliver up to your suppliant to be cancelled, the several bonds or obligations which he the said B. W. had obtained and gained from your suppliant, for the money that your suppliant was to pay for the purchase of the store-keeper's place for the town of L. and other adjacent towns in the said county of A. and your suppliant well hoped that the said sir T. B. had been then living, and would have granted to him such deputation, as aforesaid, and that what the said B. W. and L. T. averred to your suppliant at that time for truth was true, and that the said B. W. had power to sell and dispose of for life to your suppliant, the store-keeper's place for the town of L. and other adjacent towns in the said county of A. as aforesaid, and that the same would have been worth to your suppliant, one hundred pounds per annum, as is herein before set forth, and that he the said B. W. would have punctually performed all his promises made to your suppliant touching the premises, herein before set forth, and that your suppliant should have been put into the quiet possession of the said store-keeper's place for the town of L. and other adjacent towns, and enjoyed the same during the term of your suppliant's natural life: BUT NOW SO IT IS, may it please your lordship, the said B. W. and L. T. entering into combination and confederacy together, with an intent not only to defeat your suppliant of the several sums of money which they, or one, or both of them have received and had from your suppliant, for the purchase of the store-keeper's place for the town of L. and other the adjacent towns in the county of A. as aforesaid, but also to extort from your suppliant, another sum of money, never came near your suppliant since the receipt of the several sums of money herein before set forth, to deliver to your suppliant, the deputation or grant under the hand and seal of the said sir T. B. for the said store-keeper's place for the said town of L. and other adjacent towns in the said county of A. or to put your suppliant into the quiet possession of the same, according to his contract and agreement made with your suppliant, as aforesaid; but instead of so doing, the said B. W. hath put the several bonds or obligations in suit against your suppliant, and endeavours to recover the penalty thereof, without taking notice of the several sums of money he hath received from your suppliant in full satisfaction for the same, notwithstanding the said B. W. had never any power to sell or dispose of the said store-keeper's place for the said town

of L. and other adjacent towns in the said county of A. nor was the said sir T. B. living at the time of his the said B. W. selling the said place to your suppliant, and receiving of your suppliant, the several sums of money herein before set forth, for the purchase of the same, as your suppliant is ready to prove and make out to this honorable court: **ALL WHICH DOINGS AND TRANSACTIONS** of the said B. W. and L. T. are contrary to all equity and good conscience, and tend to your suppliant's great wrong and apparent damage; *in tender consideration whereof*, and forasmuch as your suppliant is altogether remediless, &c. and the rather for that your suppliant's witnesses, &c. so that your suppliant wholly relies upon the oaths of the confederates for a full discovery of the premises. **TO THE END THEREFORE**, that the said B. W. may upon his several and respective corporal oaths, set forth and discover whether he did not inhnuate himself into your suppliant's company, and afterwards sell unto your suppliant, the store-keeper's place for the town of L. and other adjacent towns in the county of A. and promise your suppliant a grant or deputation from under the hand and seal of sir T. B. and to put your suppliant into the quiet possession of the same, and whether he hath not received from your suppliant for the purchase of the same, the several sums of money herein before set forth, or what other sum or sums of money, and whether he hath not such bonds or obligations from your suppliant, upon the account of purchasing the said place, and whether he did not sell your suppliant such horse and other accoutrements, and take such bill or bond from your suppliant, for payment of the same, as aforesaid, or whether the said horse and accoutrements were then worth more to be sold than five pounds, or what other sum; and that they may answer all and singular the premises, and shew cause, if they can, why they should not deliver up the said bonds or obligations to your suppliant to be cancelled, and repay to your suppliant all such sum or sums of money as they both, or one of them have received from your suppliant, with his damages, your suppliant being willing to discount and allow to the said B. W. what the horse and accoutrements shall appear *bona fide* to be worth; and that your suppliant may be relieved in the premises. May, &c.

A Bill to discover an Estate kept from an Heir by Fraud.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship, your suppliant E. S. of, &c. in the county of Donegal, gentleman, cousin and next heir of J. H. of C. in the said county of Donegal, gentleman, that the said J. H. being in his life-time and at the time of his death, seized in fee-simple, or of some other good estate of inheritance, to him and his heirs, of and in all the manor of R. parcel of the manor of G. in the said county of Donegal, and of and in divers other houses, lands, tenements and hereditaments within the parishes and townships of R. and G. aforesaid, and elsewhere in the said county of Donegal, worth one hundred pounds per annum, and upwards, and two thousand pounds to be sold and upwards, and being also possessed of a very considerable personal estate, to the value of three hundred pounds and upwards, he the said J. H. in or about the year of our Lord, one thousand seven hundred and eighty five, died intestate, and without making any disposition of the said estate, and leaving no other issue behind him but M. his son and heir, to whom the estate after the death of his said father did come and descend, though but then an infant of tender years, who shortly after the death of his said father, died without issue of his body, whereby the said premises and right of administration to the said J. and M. their personal estate did descend and belong to your suppliant, as next cousin and heir to the said M. and to his said father J. that is to say, the son of A. H. who married G. S. who was your suppliant's father, which said A. was aunt to the said J. H. and your suppliant by reason of such his right and title, ought to have and enjoy the real and personal estate of the said J. H. BUT NOW SO IT IS, may it please your lordship, that P. H. the widow and relict of the said J. H. who hath since

since intermarried with one B. W. combining and confederating together, and to and with H. M. of Dublin, gentleman, and a clerk in the fix clerks office, and with several other persons as yet unknown to your suppliant, who, as they shall be discovered, your suppliant prays may be made parties to this bill, with apt words to charge them, how to defraud and disinherit your suppliant of the said real and personal estate of the said J. H. they the said confederates or some of them, did immediately after the decease of the said J. H. enter into and seize upon all the real and personal estate of the said J. H. and have, or some of them hath ever since enjoyed the same, and received the profits thereof, and have sold and disposed of the said personal estate to the value of three hundred pounds and upwards, and converted the same to their own private ends and uses; and now the said confederates do pretend and give out in speeches, that the said J. H. some time before his death, that is to say, on or about the month of February, which was in the year of our Lord God, one thousand seven hundred and eighty five, did make his last will and testament in writing, and did therein and thereby give and devise the lordship of R. and all his houses, lands, tenements and hereditaments whatsoever within R. and the parish of G. or elsewhere in the said county of D. unto the said A. his wife, H. P. of V. in the said county of D. gentleman, (but since deceased) without issue, and unto the said H. M. who is the said his brother and heir, and to their heirs and assigns for ever; whereas your suppliant doth here particularly charge, that the said J. H. did either not make any will or such disposition of the said premises, as aforesaid, or he was at that time so weak and imperfect in his understanding, that he was not of ability to make such will or disposition, but in case this honorable court shall be satisfied that the said J. H. did make such will and disposition of the said premises, and was capacitated so to do, then your suppliant doth charge, that such will, disposition and bequest of the said premises, was only to the intent and purpose to sell and dispose so much thereof for the payment of his debts, as his personal estate could not extend to pay, and that after such sale and payment made, as aforesaid, the residue of the said real estate, was by some other clause in the same pretended will, limited and appointed to go to his son M. and his heirs for ever, and for want of heirs of his body, to the right heirs of the said J. H. for ever, and made the said M. H. executor thereof;

and

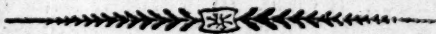
and the said M. H. being since deceased without issue of his body, and your suppliant's mother A. H. having three brothers, namely, L. N. and V. and three sisters, B. T. and S. who are long since dead without issue, except the said L. and the said L. having had three sons, N. H. and J. H. under whom your suppliant claims, as aforesaid, the said N. and J. the said J.'s brothers being both also dead without issue, your suppliant is advised he is next heir at law to the said J. H. as aforesaid, and as such he is very well entitled to the said remainder of the said premises, after all debts paid, in case there be such will, and ought to have an account from the said confederates, of the real and personal estate of the said J. H. which they altogether refuse to do, although in a friendly manner requested so to do, but on the contrary do pretend, that they either have sold or must sell all the said whole estate for the payment of the said J. H.'s debts, whereas your suppliant doth here particularly charge, that the personal estate of the said J. H. together with the profits of the real estate received by them, with the money they have raised by sale of some part of the premises, would have been sufficient to have paid all his just debts, with a great overplus, if the same had been employed and laid out to that purpose; for your suppliant doth charge, that the said J. H. was little or nothing indebted upon their own proper account, or for his own debts, but if there was any debt, the same were debts which he had engaged himself for the debt or damage of some other persons, and the which persons were then able to have paid and discharged the same, if they had been carefully looked after, but now by the negligence of the said confederates, they are now become insolvent, and now the said confederates would charge the said estate with the payment of such debts, which your suppliant hopeth this court will not permit, but lay the burthen and charge thereof upon the said confederates, or where such miscarriage and default shall appear to this honorable court, that there are any debts of the said J. H. yet standing out and unpaid, your suppliant hopes this honorable court, for the preserving of the said estate, and to keep it entire, will compel the said trustees and confederates to assign and transfer their trusts and estates to your suppliant, upon your suppliant's payment, or undertaking the payment of such debts as are remaining unpaid: and your suppliant doth farther charge, that the said confederates by the combination aforesaid, to make a greater benefit

benefit to themselves out of the said estate of the said J. H. and to clog the same with the whole debts which they pretend to be owing by him, they the said confederates have either made some composition of several of the said pretended debts, or there was some abatement made thereof to them, upon payment of such debts as they were to have or had some benefit or advantage thereby, or else such payments as they pretend they made were only in shew and false, and all or some part thereof was repaid to some of them, or to some persons for some of their uses, or they had some gratuity or reward for making payment of some of the said debts, and yet the said confederates do pretend they have paid the whole of such debts, and do design to charge the said estate with the whole debts, and refuse to apply such abatement, benefit and advantage to the said estate, as in all equity and conscience they ought to do; and at other times the said confederates W. and his said wife, do give out in speeches, that by another clause of the said will, the said confederate A. was to have and receive out of the said lands at R. the rent of twenty pounds per annum, or else the interest of three hundred and forty pounds half-yearly, during her life, and do threaten to charge the said estate with the said rent or payment, whereas your suppliant doth here also charge, that in case there be any such clause or bequest, the same was made conditionally, that in case of any of the lands at B. (which were settled upon the said A. for her jointure) should be sold, then the said yearly rent or payment was to be made to her during her natural life, in lieu thereof, but not otherwise: and your suppliant doth charge, that no part of the said land at B. hath hitherto been sold, nor any occasion for the same, therefore such demand of the said rent is without title or colour of any right, and your suppliant hopeth this court will compel the said confederates to release such claim and demand, upon your suppliant's payment of the residue of the said J. H.'s debts, as aforesaid; **ALL WHICH ACTINGS AND DOINGS** of the said confederates, are contrary to equity and good conscience, and tend to your suppliant's manifest oppression and disinherison; *in tender consideration whereof*, and forasmuch as your suppliant is altogether remediless in the premises, by the course of the common law of this realm, or elsewhere, but in a court of equity before your lordship, where matters and practices of this nature are properly examinable, and to
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be relieved; and the rather for that your suppliant's witnesses who could prove the truth of the premises, are either dead, beyond the seas, or in places remote and unknown to your suppliant, so that your suppliant cannot discover the practices of the said confederates, but by their answers in this honorable court, whereunto when they shall be called, your suppliant hopeth they will confess the truth in all the matters and charges aforesaid. **TO THE END THEREFORE,** that the said confederates may upon their corporal oaths, true and perfect answer make to all and singular the matters and charges aforesaid, as if they were again particularly interrogated; and particularly that they may set forth whether your suppliant be not next heir at law to the said J. and M. his son, or if they do not believe the same, and what reason they have to believe to the contrary, and if they do know of any other person, and who by name, that is a nearer heir to the said J. and M. his son, and if they do not believe or know that the said M. the said J.'s son, is dead without issue, and if the said three brothers and sisters of your suppliant's mother, are not all dead without issue, except the said L. her brother, and if they do not know or believe that the said L. who was your suppliant's mother's brother, had three sons, N. H. and J. and if they do not know or believe that the said N. and J. are also dead without issue, and may set forth if the said J. H. was not seized of, and enjoyed the said premises, and was reputed owner thereof when he died, and what the same are or were worth by the year for ten years last past, and may set forth if the said J. H. made such will as is pretended, and if he did, may set forth how long it was made before his death, and if he was sensible and had capacity of making such will, or knew what he did when he ordered the same to be made, and also when he published the same, and if all his whole mind, instructions and directions were inserted therein, or if any other, and what matter than what he directed was put in such will, and who writ the same, and if the said will they now set up, was read to him in the same form and words it now remains and is in, or in some other, or what form or words, and how long before he died it was so read, and did he then declare the same to be his last will and testament, and what other words and expressions did he use in reading or publishing such will, or if he knew what he then did or said, or if he, or who else for him, did subscribe his name, or only his
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mark, and who were the witnesses thereto, when he so published and subscribed his will, and also where were they and he when the said witnesses subscribed their names to it as witnesses, and may discover the whole manner and formalities of making and publishing the said will, and how the same was done; and that the said confederates may set forth and discover if the said A. or her said husband, did not upon the death of the said J. H. enter into and upon all the said premises they pretend to be devised to be sold, as aforesaid, and if they, or one of them, and who else besides, have not ever since enjoyed the same, or received the rents and profits thereof, and what hath been yearly made thereof, and what part thereof hath been sold and disposed of, and when, to whom, and for what, and for how much money, and if the same was a full and valuable consideration for so much as hath been sold, and how the money thereby raised, together with the profits or rents of the said premises, hath been employed and disposed of, and to whom, and when, and for what; and that the said confederates may also set forth and discover the personal estate of the said J. H. and wherein it did consist, and of what value it was, and how much was upon specialties or without, and by whom owing, and what ready money or other things there were, and how the same hath been employed, and what debts of the said J. H. have been got in or recovered, and which are yet standing out, and if such personal estate of the said J. H. was not valued and appraised after his death, and to how much it was so valued, and if it was not undervalued in some, and what particulars, and if the confederates, or some of them, did not seize upon such personal estate and make a benefit thereof, and may discover how they have employed and disposed of the same; and that the said confederates may set forth which of the said debts are paid or discharged, and which are yet unpaid and unsatisfied, and if some, and which of the said debts have not been compounded, or some abatement thereof made, or if some advantage or benefit did not thereby come to some, and which of the said confederates; and that the said confederates may set forth if the said lands at B. are sold, and that the said confederates may shew cause why they should not come to an account with your suppliant for the personal estate of the said J. H. and the money made thereof, and out of the profits made of the premises, and the money raised
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by sale thereof, or any part thereof, or otherwise, and why they should not transfer and assign their estate and trust in the said premises to your suppliant and his heirs, or to some other person in trust for him, upon your suppliant's undertaking and paying the residue of the said J. H.'s debts that are yet unpaid, in case there be any such, and that the confederates may be stayed by the injunction of this honorable court, from selling any more of the said premises, and that the said A. and her said husband, may release their right and claim to the said rent charge or yearly payment, and that your suppliant may be otherwise relieved in the premises as this honorable court shall award and decree. May it please, &c.



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Bill to carry the Purposes of a Will into Execution, and to Account for arrears of an Annuity bequeathed thereby.

To the Rt. Hon. and Hon. the Chancellor, Treasurer, Lord Chief Baron, and the rest of the Barons of his Majesty's Court of Exchequer in Ireland.

HUMBLY complaining shew unto your lordships, your suppliants and daily orators W. N. of New-street, in the city of Dublin, baker and A. N. otherwise G. his wife, that R. S. formerly of Dame-street in the city of Dublin, brewer, on or about the thirty first day of May, one thousand seven hundred and seventy two, duly made and published his last will and testament in writing in the presence of 3 credible subscribing witnesses, and thereby gave and bequeathed all his right, title and interest of, in and to his lease, houses and concerns which lay in Dame-street aforesaid and Trinity-street, and which he held by lease of lives renewable for ever, under C. S. late of the city of Dublin deceased, and also his interest in his holding in Golden-lane, near Bride-street, in the said city of Dublin, to his son J. S. and M. his wife, and the survivor of them and their issue, and in case his said son J. S. should not have any issue by his said wife, then he gave and bequeathed his said interests to the issue of his said son J. by any after taken wife he should happen to marry, and in case his said son J. should happen to die without issue, then he gave and bequeathed his said interests which he held under the said C. S. unto his grandson P. G. and his heirs, and after bequeathing some trifling pecuniary legacies, the said testator by his said will, gave and bequeathed unto your suppliant A. N. by the name and description of his grand daughter A. G. the sum of five pounds sterling yearly during the lease,

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to be paid her as soon as might be out of the rent payable by his tenant Mr. A. D. in Trinity-street aforesaid; your suppliants further shew, that the words "*yearly during the lease*," appear to be interlined in the said original will, but the same is taken notice of in the said will before the signature thereof by the testator or the attestation thereof, by the subscribing witnesses thereto, there being inserted therein, these words following, to wit, the words "*yearly during the lease*," being first interlined; your suppliants further shew, that the said testator by his said will impowered his said son J. S. or whoever would be in possession of the said premises, to raise by mortgage or otherwise, so much money as would pay all incumbrances affecting said premises, and of his said will appointed his said son J. S. and M. his wife, executors; your suppliants further shew, that the said testator R. S. soon after making his said will, died without altering or revoking the said will, and upon his decease, his said son J. S. caused the said will to be proved in the register office appointed by act of parliament for the registry of deeds, wills, conveyances, and so forth, and the execution of the said will and memorial was duly proved pursuant to the said act of parliament, as by the deputy register's certificate on the said original will, now in the hands, power or custody of P. R. merchant, one of the confederates herein after named, had your suppliants the same to produce, would more fully and at large appear; but your suppliants shew, that the said will never was lodged in any ecclesiastical court whatsoever; your suppliants further shew, that the said J. S. and M. his wife, died several years ago without issue, and that upon their decease, the interest of the said R. S. the testator, in the said houses in Dame-street and Trinity-street, pursuant to the devise in the will of the said R. S. came to and vested in the said P. G. his grandson, and in like manner your suppliant A. N. otherwise G. upon the decease of the testator, became entitled to the said annuity of five pounds yearly, during her natural life at least, issuing out of the said house in Trinity-street; BUT NOW SO IT IS, may it please your lordships to be informed, that the said P. G. combining and confederating himself to and with the said P. R. and to and with divers other persons at present unknown to your suppliants, whose names when discovered, your suppliants pray they may be at liberty to make parties to this their bill, with apt and proper words to charge them,

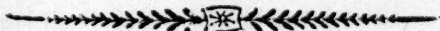
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each and every of them, he the said P. G. gives out and pretends, contrary to truth, that the said testator R. S. by his said will only meant and intended to bequeath a sum of five pounds only to your suppliant A. N. otherwise G. though your suppliants expressly charge, that it is evidently the intention of the said testator, by his said will, to bequeath an annuity of five pounds yearly, during his the said testator's lease thereof; but the said P. G. in order to render it the more difficult for your suppliants to recover the said annuity of five pounds, the lease or interest of the said A. D. in the said house in Trinity-street, having expired some time in or about the year took upon him to sell and dispose of his interest in the said house in Trinity-street, to the said P. R. but so conscious were the said P. G. and P. R. of the just rights of your suppliants to the said annuity of five pounds, that your suppliants expressly charge, that in the said deed of sale of the said house in Trinity-street, from the said P. G. to the said P. R. there is a clause, that in case your suppliant A. or any other person for her, should claim or be able to enforce him to the payment of said five pounds yearly, that said P. G. is to be forthcoming to him for the same; but the said P. R. utterly refuses to pay your suppliants said annuity of five pounds, unless he is compelled by law so to do, well knowing, as your suppliants charge, that the said original will being in his own possession, your suppliants for want thereof, could not by law recover the same; and the said P. G. refuses to account with your suppliants for the said annuity of five pounds, from the death of the said testator, or even from the time he by virtue of the limitations in the will of the said R. S. the testator, became entitled to the said house and premises in Trinity-street, or to permit or suffer the said P. R. to pay your suppliants the said annuity of five pounds; and the said P. G. and P. R. severally refuse to do your suppliants any manner of justice in the premises, but put your suppliants to open defiance: ALL WHICH ACTINGS AND DOINGS of the said confederates are contrary to equity and good conscience, and tend to the great wrong, injury and oppression of your suppliants, who are thereby rendered the less able to pay the debts they owe his majesty at the receipt of this honorable court; *in tender consideration whereof*, and forasmuch as your suppliants are remediless in the premises, by the strict rules of common law, and
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are only properly relievable in this honorable court, where matters of fraud, account, and the enforcing the dispositions made by wills, and this nature are properly cognizable: TO THE END THEREFORE, that the said P. G. P. R. and their confederates when discovered, may true, plain, perfect and distinct answers make to all and singular the matters, charges and things herein contained, as fully and particularly as if the same were herein over again repeated, and they thereunto interrogated, and that not only to their knowledge, but also to their credible hearsay, recollection and belief, and particularly that they may set forth and discover, whether the said R. S. did not at the time herein before set forth, or at any other time, and when, make and publish such last will and testament as herein before set forth, or any other, and what will, did he not thereby give and bequeath unto your suppliant A. N. the sum of five pounds yearly during the lease, to be paid her as soon as may be, out of the rent payable by his tenant Mr. A. D. in Trinity street aforesaid, were not the words "*yearly during the lease*," interlined in the said original will, at the express desire and directions of the said testator, or at the desire or by the directions of any other person, and who, is not the same taken notice of in the said will before the signature thereof by the testator, or the attestation thereof by the subscribing witnesses thereto, as herein before set forth, or how otherwise, is there not inserted therein, the words herein before set forth, to wit, the words "*yearly during the lease*," being first interlined, did not the said testator by his said will, empower his son J. S. or who ever would be in possession of the said premises, to raise by mortgage or otherwise, so much money as would pay all incumbrances affecting said premises, as herein before set forth, or how otherwise, and of his said will did he not appoint his said son J. S. and M. his wife, executors, or any other, and what executors, did not the said testator R. S. soon, and how soon after making his said will, die, without altering or revoking the said will, and upon his decease did not his son J. S. or any other person, and who, cause the said will to be proved in the register office as herein before set forth, or how otherwise, does not the said original will so registered as aforesaid, appear to have the words interlined therein, herein before set forth, or any other, and what words, was the said will ever lodged in any ecclesiastical court whatsoever, did not the said J. S. and M. his wife, die
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several, or any, and how many years ago respectively, without issue, and upon their decease did not the interest of the said R. S. the testator, in the said houses in Dame-street and Trinity-street, pursuant to the devise in the will of the said R. S. come to and vest in the said P. G. his grandson, or in any other person, and who, and in like manner did not your suppliant A. N. otherwise G. upon the decease of the said testator, become entitled to the said annuity of five pounds yearly, during her natural life at least, issuing out of the said house in Trinity-street, does not the said P. G. give out and pretend, contrary to truth, or how otherwise, that the said testator R. S. by his said will, only meant and intended to bequeath a sum of five pounds only to your suppliant A. N. is it not evidently the intention of the said testator, by his said will, to bequeath an annuity of five pounds during his the said testator's lease thereof, did not the interest of the said A. D. in the said house in Trinity-street, expire some time in or about the year or at any other, and what time, and did not the said P. G. in order to render it the more difficult for your suppliants to recover the said annuity of five pounds, take upon him to sell and dispose of his interest in the said house in Trinity-street, to the said P. R. were not the said P. G. and P. R. conscious of the just rights of your suppliants to the said annuity of five pounds, in the said deed of sale of the said house in Trinity-street, from the said P. G. to the said P. R. is there not a clause, that in case your suppliant A. or any other person for her, should claim or be able to enforce him to the payment of said five pounds yearly, that said P. G. is to be forthcoming to him for the same, and does not such clause evince a consciousness in the said parties, of the just rights of your suppliants, does not the said P. R. utterly refuse to pay to your suppliants, the said annuity of five pounds, unless he is compelled by law so to do, does not the said P. R. well know that the said original will was and is in his own possession, that your suppliants for want thereof, cannot by law recover the same, and does not the said P. G. refuse to account with your suppliants for the said annuity of five pounds, from the death of the said testator, or even from the time he by virtue of the limitations in the will of the said R. S. the testator, became entitled to the said house and premises in Trinity-street, or to permit or suffer the said P. R. to pay your suppliants the said annuity of five pounds, do
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not the said P. G. and P. R. severally refuse to do your suppliants any manner of justice in the premises, but put your suppliants to open defiance, and why do they so refuse: **TO THE END THEREFORE**, that an account may be taken under the direction of this honorable court, of the arrear of the said annuity of five pounds, from the death of the said testator R. S. distinguishing such part thereof as became due since the said P. G. under the limitation in the will of the said R. S. became entitled to the said premises, and that the same may be decreed to be paid to your suppliants by the said P. G. or P. R. or one of them, by a short day, or in default thereof, that the same may be raised by sale of some part of the said testator's freehold estate. May it therefore please your lordships, to grant unto your suppliants, &c. *Pray subpoena, duces tecum to bring in will and original lease under which the premises are held, injunction to stop defendants from intermeddling or distraining for rent, and general relief.*



Bill to set aside a Sale had under an Execution upon a Judgment fraudulently obtained, and that the Lease made to the Purchaser might be Decreed to be a Lease made in Trust for the Plaintiff.



To the Rt. Hon. John, Lord Visc. Fitzgibbon. Lord High Chancellor of Ireland.

HUMBLY complaining, your suppliant and daily orator H. E. of Drumdeer, in the county of Cork, gent. sheweth unto your lordship, that F. H. of Dunderrow, in the county of Cork, merchant, did in or about the year one thousand seven hundred and seventy seven, in order to establish a credit in the city of Dublin, and to procure liberty from D. T. then of the said city, merchant, since deceased, to draw bills of exchange on him, prevail on S. J. of Rathcormuck, in the county of Cork, esquire, to execute his bond payable to the said H. with warrant of attorney for confessing judgment thereon, for the sum of four thousand pounds sterling, conditioned for the payment of the sum of two thousand pounds to the said H. on a certain day then to come and now long since past; to the end that the said H. should assign the same or a judgment to be obtained thereon to said F. as a security for such bills of exchange as the said H. should thereafter draw on the said D. F. your suppliant sheweth, that the said F. H. in order to indemnify and counter-secure the said S. J. against the said bond passed for the purpose aforesaid, and for no other purpose whatsoever, executed to the said S. J. his bond and warrant of attorney for confessing judgment thereon, for the like sum of four thousand pounds, joined at security for the said H. your suppliant further sheweth, that the said F. H. shortly after went to the city of Dublin, and that a deed or instrument in writing was then duly executed by the said H. and T. bearing date on or about the

the twenty first day of May, one thousand seven hundred and seventy seven, whereby it was agreed upon between them, that the said D. T. should accept the bills of the said H. for any sum not exceeding fifteen hundred pounds, he the said H. always before such bills should become due, supplying the said T. with money, or good and responsible negotiable bills of exchange, as a provision for discharging such bills as the said D. T. should accept for the said F. H. and after reciting that the said F. H. had lodged with the said T. the said bond and warrant of the said S. J. for the principal sum of two thousand pounds, as also his own bond and warrant for the sum of fifteen hundred pounds principal money, for the purpose of saving harmless or indemnifying the said D. T. for his acceptances, the said D. T. thereby promised and agreed that he would not sue the said S. J. for the contents of the said bond, but in case of necessity, and of failure of the performance of said agreement on the part of the said F. H. as by the said deed or instrument which was delivered by the said H. to P. G. gent. the then attorney for said J. at his request, and for which the said G. passed a receipt on the nineteenth day of April, one thousand seven hundred and eighty two, now in your suppliant's hands, and to which he refers, and which deed or instrument is now in the hands, custody or power of the said J. had your suppliant same to produce might more fully appear; your suppliant further sheweth, that the said H. in order the better and more effectually to secure the said D. T. from all hazard and loss in their said intended dealing, entered judgment on the said bond perfected to him by the said S. J. and by deed duly executed, did assign the said judgment to the said D. T. upon the strength and credit of which, and in pursuance of the before mentioned agreement, the said T. from time to time afterwards accepted divers bills of exchange drawn on him by the said F. H. in favour of several persons to a considerable amount, but your suppliant having in some time afterwards observed some instances of impropriety as he conceived in the conduct of the said F. H. therefore resolved to withdraw himself from the said security to which he had entered for him as herein before set forth, and for that purpose, and in order to discover how far and to what amount your suppliant stood engaged at that time for the said H. under said security, your suppliant did in or about the
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month of May, one thousand seven hundred and seventy eight, make frequent applications to the said J. who had been always apprized of and conversant with their dealings for information touching the same, and the sum in which the said H. then stood actually indebted unto the said D. T. and the said J. having perceived that your suppliant had entertained some uneasiness on that occasion, did assure your suppliant that there was no necessity whatsoever for such his uneasiness, for that said H. was a man of considerable fortune, and did not owe more than a sum of one hundred pounds, or some such small sum of money to the said T. and although your suppliant did not at that time suspect or imagine that the said S. J. had formed any unfair intention towards or design against your suppliant touching his said security, yet your suppliant, from the impropriety of the said F. H.'s conduct herein before alluded to, continued to solicit the said J. to erase your suppliant's name out of and exonerate him from the said security in which he stood bound to him for the said F. H. as herein before set forth, and in order to induce the said J. to comply with your suppliant's said solicitations, your suppliant proposed and offered to pay into the hands of the said S. J. or to remit to the said D. T. the said hundred pounds which the said J. alledged to have been at that time due to the said T. by the said F. H. upon the foot of their said dealings, but the said J. having expressed a difficulty in complying with your suppliant's desire, upon a supposition or apprehension that the bond so executed by your suppliant, and from which he thus sought to be exonerated, might, by erasing or expunging your suppliant's name therefrom, be rendered invalid, as against the other obligors therein named, your suppliant therefore desired the said S. J. to observe and take notice that your suppliant would no longer hold himself security to the said J. but would on the contrary consider himself as entirely exonerated and discharged therefrom, whereupon the said J. solemnly declared and assured your suppliant, that your suppliant should not be held accountable for the payment of any sum of money whatsoever on account thereof; and your suppliant charges, that the said J. in confirmation of such assurance, in the presence of two respectable persons, took a voluntary oath that the said J. would never call upon, or make any demand against, or at all resort to your suppliant for or on account of his said security

for the said H. or for or on account of any demand whatsoever which the said J. might have against the said H. on account of his said dealing with the said T. or to that effect, but that your suppliant should, on the contrary, stand released therefrom; and your suppliant sheweth, that the said declarations and assurances of the said S. J. were expressed in language so sincere, full and unequivocal, that your suppliant the moment the same were thus made and repeated, considered himself as entirely discharged from his said security, and your suppliant relying upon the faith and integrity of the said J. and believing his said oaths, declarations and promises to have been founded in sincerity, your suppliant therefore rested contented under the same, and did not believe or at all apprehend that he should be by any means called upon or deemed responsible to the said S. J. or to any other person for any of the dealings of the said F. H. and your suppliant thus secured, as he conceived himself, was amused and diverted from pursuing any legal mode to procure himself to be exonerated from his said security, and of compelling the said S. J. to expunge his name therefrom, and also of compelling the said F. H. to discharge whatever balance he might have been at that time indebted unto the said D. T. or to resort to the said F. to extricate him, which your suppliant might easily and would have done, as the said H. continued for a considerable time afterwards in good credit and circumstances; your suppliant further sheweth, that although he did not entertain the most remote suspicion that any unfair design had been formed against him by such the before-mentioned repeated promises and declarations of the said S. J. and that the same were not founded in the most unlimited sincerity and truth, and that your suppliant was not thereby perfectly exonerated and released from his said security for the said H. yet the said H. by the directions of the said J. and in order to remove every particle of doubt that might possibly have remained in your suppliant's mind touching the same, called upon your suppliant in a short time after he had been in manner aforesaid released from the said security, and in presence of the said S. J. and at his particular instance, produced to your suppliant a receipt passed by the said D. T. to him the said H. for one thousand and fifty pounds, paid by him to the said T. on the second of May, one thousand seven hundred and

and seventy eight, which, as the said H. then declared, left a sum of three hundred and forty eight pounds, or some such inconsiderable balance due by him to the said T. and which he faithfully promised he would forthwith discharge; and the said H. and J. also declared in your suppliant's presence, that there was then an end to all further dealings between said H. and T. for that the said T. was in such a bad state of health, that he had been obliged to quit business, and to close the account between him and the said H. and would no longer accept bills for the said H.; your suppliant further sheweth, that the said T. died on or about the tenth day of June, one thousand seven hundred and seventy eight, having made his last will and testament in writing, and thereof appointed K. B. and J. T. executors, and the said F. H. on or about the fifteenth day of December, one thousand seven hundred and seventy eight, and on or about the seventh day of January, one thousand seven hundred and seventy nine, paid two further sums, viz. a sum of eighty six pounds, and another of two hundred and twenty six pounds five shillings and six pence, to the said K. B. as executor of the said D. T. as by the said B.'s two several letters, bearing date respectively the said fifteenth day of December and seventh day of January in the said last mentioned years, and to which your suppliant craves leave to refer, may more fully and at large appear, so that there remained no more than the sum of thirty six pounds three shillings and three pence due to the executors of the said D. T. on the foot of the account between the said H. and T. and of the said judgment obtained by the said H. against the said J. and so as aforesaid assigned to the said T.; and your suppliant charges, that the said last mentioned sum is the only debt (if any) now due to the said executors on the foot of said dealings carried on by the said F. H. and D. T. as herein before set forth; your suppliant further sheweth, that the said bond in which your suppliant joined the said F. H. as security to the said S. J. as aforesaid, was passed merely for the purpose of counter-securing the said S. J. against his bond to the said H. (the judgment upon which was pursuant to the original intent and agreement assigned to the said D. T. as aforesaid) and in order to indemnify him the said J. against any demands of the said T. on the foot of the said bond and judgment, pursuant to the said agreement, and not for any other purpose

purpose or consideration whatsoever; BUT NOW SO IT IS, may it please your lordship, that the said S. J. combining and confederating to and with said F. H. and with M. B. who was the sheriff of the said county of Cork for the year 1780, and with C. E. gentleman, who was said B.'s sub-sheriff, and with B. C. of Rathclare, in said county, gent. and to and with B. Y. esquire, and with divers other persons at present unknown to your suppliant, whom when discovered, he prays he may be at liberty to make parties to this bill, with apt words to charge them, how to injure and oppress your suppliant; said S. J. alledges, that an account was settled between the said H. and T. whereby there appeared a balance of twelve hundred pounds due to the said D. T. and that the said H. being unable to discharge the said balance, prevailed upon the said M. B. to lend him a sum of twelve hundred pounds upon the joint bond of the said H. and J. and that the said H. accordingly applied part of the said twelve hundred pounds in discharge of so much then due to the said D. T. and although the said J. had at that time, and upon the occasion herein before for that purpose particularly stated, promised that he would no longer hold your suppliant as bound to him under the said bond in which he had joined the said F. H. as herein before set forth, yet the said J. in violation of his said promise, and in order to injure and oppress your suppliant, now insists and declares that he has a right under and by virtue of the said bond, to compel your suppliant to pay the said sum of twelve hundred pounds to the said M. B. and also to pay off and discharge the sum claimed to be due to the said executors of the said D. T. on the foot of the said account between them and the said F. H. and although the said S. J. positively agreed that your suppliant should stand released and exonerated from his said bond and security at the time herein before stated, and although the said sum of twelve hundred pounds, (if any such sum has been really lent by the said M. B.) was borrowed from the said M. B. by the said H. without the knowledge or privity of your suppliant, yet the said J. and his said confederates give out and pretend, contrary to the truth, that the said sum of money was lent and advanced upon the strength and credit of your suppliant's said bond, which your suppliant charges was passed for the sole and only purpose of counter-securing said J. with regard to such bills of exchange

exchange as the said H. should draw upon the said T. as herein before set forth, and upon the foot of which hundred pounds, and no more, was confessed and admitted by the said S. J. himself, to have been due at the time he agreed to release and exonerate your suppliant from his said security, as herein before mentioned; and your suppliant sheweth, that the said H. having, under the patronage, countenance and sanction of the said S. J. carried on a very considerable traffic in the trade and business of a grocer and tanner in Dunderrow, where he resided, and having dealt in the discount of country bills and other securities, and the said H. having had in or about month of April, one thousand seven hundred and seventy eight, occasion to borrow a sum of money, for the purpose of enabling to prosecute and carry on such his traffic in a more extensive stile and manner, and having had at that time in his possession several bills of exchange, notes and other securities for money, to the amount of two thousand pounds, or some very considerable sum of money, he the said F. H. applied to the said M. B. to lend and advance him a sum of twelve hundred pounds, upon an assignment or endorsement of the said bills and securities, but the said B. preferring a bond to that mode of security, acquainted the said H. that he the said B. would lend and advance to him the sum he required, provided he would procure some solvent and reputable person to join him in a bond to the said B. for the same, whereupon the said H. applied to the said S. J. to join him in such bond, to which the said J. consented, having first procured the said H. to endorse and hand over to him the most unexceptionable and solvent part of the before mentioned several bills, notes and securities, to the amount of one thousand two hundred and forty nine pounds one shilling and one penny, and thereupon the said F. H. and S. J. perfected their joint bond or obligation unto the said M. B. for the said sum of twelve hundred pounds, and as a convincing proof that the said bills, notes and securities were handed over to the said S. J. by the said F. H. for the purpose of indemnifying him against the said bond, a list of the said several bills, notes and securities so handed over to the said S. J. was made out, and at the foot thereof, the said S. J. perfected a receipt and acknowledgment under his hand for the same, in the words and figures following: "received from
" F. H. the above securities, as a guarantee for my joining
" him

“ him in a bond to M. B. esquire, for twelve hundred pounds. Rathcormuck, twenty third day of April, one thousand seven hundred and seventy eight, S. J.” as by the said receipt bearing date as aforesaid, which your suppliant hath lately got into his possession, ready to be produced and proved, and to which he craves leave to refer, may more fully and at large appear; and your suppliant expressly charges, that it was merely upon the credit of the said securities so handed over to him by the said H. as aforesaid, that the said J. became security for the said H. to the said B. without any regard or relation whatsoever to your suppliant’s said bond, and your suppliant charges, that the said J. having either laid out upon his own occasions, or having misapplied the said several securities assigned to him by the said H. it then, and not sooner, occurred to him to take advantage of your suppliant’s said bond, and to charge your suppliant with the said twelve hundred pounds lent by the said B. to the said F. H. as before stated, and the said S. J. also pretends and gives out, that he has paid with his own proper money to the before named executors of the said D. T. some large and considerable sum, which he alledges, contrary to the truth, was due to him at the time of his death by the said F. H. on the foot of the said bill dealing and account, whereas your suppliant charges, that upon an account lately settled between them touching the said business, and which has been submitted to arbitration, a very small and insignificant sum of money only remained due and owing to them on the foot of said account, and that such small balance was paid to the said executors by the said S. J. out of the fund and with the proper money of the said F. H. which at that time remained in the hands of the said S. J. and in which he stood indebted unto the said F. H. and your suppliant charges, that the said executors upon such settlement, finally and entirely released the said S. J. from all further and other demands whatsoever, touching the said dealings between the said D. T. and F. H. notwithstanding which, your suppliant sheweth, that the said S. J. caused separate judgments to be entered against your suppliant and K. J. and B. N. his co-obligors on their said bond, and in the months of May or June, one thousand seven hundred and eighty, without having furnished your suppliant with any account, or making any demand whatsoever
from

from him, issued three separate executions thereon against your suppliant and his said co-obligors, each marked for the sum of one thousand five hundred pounds, and directed to the sheriff of the said county of Cork, by virtue of which execution against your suppliant, E. C. who was at that time under sheriff to the said M. B. the then high sheriff of the said county, seized all your suppliant's stock to a considerable value, and threatened by an immediate sale thereof, to levy the said sum of one thousand five hundred pounds, unless your suppliant would give him security for the amount of said sum, to indemnify the said sheriff, and also pay or content him in a large sum of money, which he the said E. alledged was his fees on said occasion, which unreasonable demand your suppliant, in order to avoid the oppression and injury thus pointed against him, and to gain some time to think of the mode he should pursue to obtain relief, was forced to comply with and accordingly executed his securities to the said E. for the sum of forty four pounds, which sum, together two pounds fifteen shillings and six pence, the costs of an assizes decree and affirmance obtained by the said E. against your suppliant on one of said securities, and three pounds three shillings and four pence halfpenny, divers fees, your suppliant was, shortly afterwards and long before any sale under said execution, obliged to pay to the said E. as by several notes, receipts, letters and said assizes decree and affirmance, ready to be produced and proved, may appear, and your suppliant also procured A. W. of Willbroke, gent. to join him in a bond and warrant of attorney, for confessing judgment in the penalty of three thousand pounds, conditioned for the payment of one thousand five hundred pounds, payable to said sheriff on a day since past, on which bond the said B. threatens that he will enter judgment and issue execution against your suppliant and the said A. W. although your suppliant charges, that the said S. J. has been hitherto perfectly indemnified with respect to said bond executed by him to the said F. H. as aforesaid, and has not yet paid one shilling of his own property on account thereof, either to the said D. T. in his life-time or to his executors since his decease, or to any other person, all the payments that were made to the said T. and his executors having been made solely by the said H. as by several receipts for the payments aforesaid, and letters from said T. and
his

his executors in your suppliant's hands, ready to be produced and proved, and to which your suppliant craves leave to refer, may appear; and your suppliant also sheweth, that the said S. J. in like manner, in or about the month of May or June, one thousand seven hundred and eighty, also issued an execution against the said F. H. and has levied by virtue thereof, out of the effects of the said H. a sum amounting to seven hundred pounds and upwards, being more than sufficient to pay off and satisfy the sum claimed by or really due to the executors of the said T.; your suppliant further sheweth, that your suppliant, on or about the fifth day of February, in the year one thousand seven hundred and eighty one, exhibited his bill in this honorable court against the said S. J. and others, charging several of the matters herein before stated, to which bill the said S. J. filed his answer, on or about the second day of July, one thousand seven hundred and eighty one, wherein he alledges, contrary to the truth, that a sum of two hundred and fifty pounds only was levied by sale of the goods and effects of the said F. H. under the execution issued against him by the said J. as herein before mentioned, though your suppliant charges, as the truth really is, that a sum of seven hundred pounds and upwards, was actually levied under the said execution; your suppliant further sheweth, that the said E. on or about the seventeenth day of January, one thousand seven hundred and eighty three, took upon himself, under colour of said execution, to sell your suppliant's interest in the lands of V. in said county of Cork, at a pretended auction held designedly and with unfair intents at a late hour of the said day, when the said E. contrived to procure K. M. and two other persons in low and indigent circumstances, to attend and bid for said lands, so as to make a sale thereof agreeable to the custom and form observed in disposing of leasehold interests by public sale or auctions, upon which occasion a sale thereof was accordingly, for some inadequate and inconsiderable sum of money, made to the said K. M. who bid for said lands, *in trust* for him the said C. E. and M. B. or one of them, by which means great trouble was brought upon your suppliant, who thus circumstanced, was forced at great expence to lay this his grievance before the court of King's Bench, from whence the said execution, thus fraudulently kept on foot against your suppliant,

had

had issued and upon solemn debate, the court was pleased to set aside the said sale; your suppliant further sheweth, that exceptions having been taken to the answer of the said S. J. the same was reported short, and your suppliant, on the eighteenth day of March, one thousand seven hundred and eighty three, amended his bill, but the said S. J. having repeatedly declared and assured your suppliant he would not proceed further on said execution, or in any other manner against your suppliant on account of his said security for said H. your suppliant rested satisfied that there was no necessity for proceeding further on his said amended bill, and therefore avoided to enforce the said S. J.'s answer thereto, but your suppliant charges, that the said declarations of the said S. J. were calculated to impose upon and deceive your suppliant, and to throw him off his guard, and as evidence thereof, and of the unfair intention of the said S. J. he the said S. J. in the year one thousand seven hundred and eighty five, at a time he perceived that your suppliant rested contented under the before mentioned declarations, filed an answer to said amended bill. and in some time afterwards, and without any notice thereof to your suppliant, entered the usual rules to and did actually dissolve the injunction your suppliant had obtained thereon, your suppliant, who was not apprized of the said proceedings, not having had any agent or fix clerk in court to attend the said cause, which your suppliant, from the reliance he had in the solemn promise made to him by the said J. considered to be at an end, and consequently that the said J. would not proceed or permit any further proceedings to be taken on the foot of said execution against your suppliant, yet the said S. J. in open and manifest violation of his said promises and assurances, consulted and formed a scheme with the said M. B. and C. E. to carry the said execution into effect against your suppliant, and to proceed thereon as if a fair demand had been really due by virtue thereof to the said S. J. although your suppliant charges, that the said S. J. and his said confederates the said B. and E. well knew and were convinced in their consciences, that your suppliant did not owe any money whatsoever to the said S. J. upon the foot of the aforesaid bond, upon which, or on a judgment founded thereon, he had issued the said execution against your suppliant, or at all; your suppliant sheweth, that on the sixth day of March, in the year one thousand seven hundred

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hundred and eighty three, a lease of the lands of V. in the said county of Cork, was granted to your suppliant by B. Y. esquire, for a term of twenty one years from the twenty fourth day of June then last, at the yearly rent of seven pounds; your suppliant further sheweth, that the said S. J. M. B. and C. E. or one of them, in pursuance of said fraudulent scheme, on or about the fourteenth day of October, one thousand seven hundred and eighty five, took upon them, or one of them, under the said dormant execution, to sell at a fictitious auction for that purpose fabricated, the interest they alledged your suppliant had in the lands of V. in the year one thousand seven hundred and eighty, as also the subsequent interest acquired as aforesaid by your suppliant, although the said fraudulent sales was affected to have been made at the said pretended auction. to B. C. of Mill-street in said county, gent. yet your suppliant charges, that the same was so made to the said C. and accepted of by him in trust for the said M. B. the then high sheriff of the said county of Cork, as aforesaid, and to whom the said C. E. was under sheriff, for a sum of six hundred pounds, which was greatly under the real value of said land, and the said B. C. and E. in further prosecution of said scheme to oppress your suppliant, at break of day in the morning of the twenty second day of said month of October, and without any legal process or power whatsoever for so doing, accompanied by a great number of said B.'s tenants, labourers and servants, armed with blunderbusses, guns, pistols and swords, and other offensive weapons, repaired to the said lands of V. and to the terror and alarm of the peaceable inhabitants of the neighbourhood thereof, then and there, by force and strong hand, took possession of the said lands, and upon that occasion, did with great cruelty and inhumanity, turn one D. E. and her daughter out of the possession of that part of the said lands which she held under a certain written agreement, for that purpose entered into with your suppliant, for full, fair and valuable considerations; and your suppliant sheweth, that although the said B. then nominally gave the possession of the whole of the said lands to the said C. yet the said C. never intermeddled therein, nor hath he claimed any right thereto, but the same hath on the contrary, ever since remained, and still continues in the possession of the said M. B. who hath converted the same entirely to his

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own use, in feeding and maintaining his own stock of cattle thereon, and although repeated applications were made to the said B. on behalf of the said D. E. to restore the possession of the said lands, yet he obstinately persevered in with-holding the same, and preventing the said D. E. from enjoying the benefit of her said agreement with your suppliant, whereby the said D. was forced to resort to the expensive necessity of applying to the court of King's Bench, to be restored to the possession of that part of the said lands, of which she had been illegally dispossessed as aforesaid, and which the court was pleased accordingly to comply with; and your suppliant sheweth, that the said M. B. having been perfectly convinced that the title and interest which he had by the means aforesaid, acquired in the said lands, were incomplete and insecure and that the same could not upon any principle of justice be established, he the said M. B. therefore and in order to defend and protect himself in such his unjust and illegal pretensions to the said lands, applied and caused several applications to be made to B. Y. esquire, and to I. Q. his agent, since deceased, to grant him a renewal of said lease, which the said Y. refused to do, unless the said B. would procure the lease so as aforesaid made to your suppliant, to be delivered up cancelled to the said Y. or his said agent; and your suppliant sheweth, that the said J. B. and E. finding themselves disappointed in succeeding in that mode to the completion of their design, bethought of another expedient for effecting the same, and for that purpose the said B. or E. or one of them, prevailed upon the said I. Q. to permit them, or one of them, to bring an ejectment in the name of the said Y. grounded on the statute for nonpayment of rent against the said lands, as if an arrear of the said rent remained unpaid, and the said E. having thereupon brought said ejectment, and a judgment by default having been obtained thereon, an *habere facias possessionem* was accordingly issued and directed to the then sheriff of the said county of Cork, who on the seventeenth day of March, one thousand seven hundred and eighty seven, took the actual possession of the said D. E.'s said holding, and turned her stock off said lands, although your suppliant charges, that if any such arrear was really due, the same was designedly suffered, in order to give in some measure, a plausible foundation for such proceedings, and as evidence that such ejectment was brought through fraud and collusion, your
suppliant

suppliant charges, that said M. B. or some person in trust for him, was at that time in the actual possession of the greater part of said lands, and would not if it was a fair transaction, have suffered himself to have been evicted for the trivial sum which could have been due, the yearly rent of the whole, being but seven pounds, and the sum sworn to be due or in arrear at the time of bringing said ejectment, by the affidavit upon which said habere issued, being so small a sum as eleven pounds and six pence, as by said affidavit remaining of record in his majesty's court of King's Bench, from whence said habere issued, and to which your suppliant refers, may more fully appear; and as further evidence of said collusion, your suppliant charges, that the said B. C. and E. or some, or one of them, have executed a bond to the said Y. or to some person in trust for him, for a large and considerable sum of money, in order to indemnify him against the costs of said ejectment, and also against any proceedings that may be instituted by your suppliant, to assert his just right to said lands; and your suppliant also charges, that the said Y. has executed a new lease of the said lands of V. to the said B. or to some person in trust for him, since the expiration of the six months allowed to redeem the said lands, and the said lease made thereof to your suppliant, as aforesaid, from the time of the execution of said habere; and your suppliant sheweth, that the said B. and E. further to harass and oppress your suppliant, have filed a bill in the court of Exchequer, in the name of the said H. C. against your suppliant, and the said D. E. and others, praying amongst other things, to have the said Y.'s lease delivered up to said C. to which bill the said B. and E. have artfully made themselves defendants, although your suppliant charges, that the said E. really prepared and filed said bill, and acts as attorney in said cause, and that the said bill is actually in trust for the said B. who seeks to get the said Y.'s lease into his possession; and your suppliant expressly charges, that the said sale made of the said lands by the said B. and E. was merely calculated for the recovery of the said B.'s own debt, due to him from the said J. in evidence whereof, your suppliant charges, that he hath not received a single shilling of the produce of the said sale of said lands from the said C. neither hath the said B. paid any part thereof to the said J. who contrary to his aforesaid several promises and declarations, and in violation of every principle of justice and equity, has suffered his name to be

be made use of in the several unfair proceedings had under the said executions issued at his suit against your suppliant, as herein before set forth, for the purpose of gratifying the said M. B. who became particularly anxious to be possessed of and entitled unto the said lands, which from their contiguity to the said B.'s place of residence, and to his other lands, became an object of moment and desire to him; and your suppliant further sheweth, as evidence of said collusion, and that said lands were purchased by the said C. in trust for the said B. that upon application being made to the said B. to restore the possession of said lands to your suppliant, of which he was so fraudulently dispossessed, as aforesaid, said B. did actually promise, that if your suppliant would pay him such sum as should appear due to him on the foot of said purchase, at any time, he would relinquish the possession of said lands, and restore the same to your suppliant, which the said B. would not and could not have offered if the said C. had been the actual purchaser, but would have referred the person so applying to the said C. ALL WHICH ACTINGS AND DOINGS of the said confederates, are contrary to equity and good conscience, and tend to the great injury and oppression of your suppliant; *in tender consideration whereof*, and inasmuch as your suppliant is remediless in the premises by the strict rules of common law, and only relievable in a court of equity, where matters of this nature are properly cognizable: TO THE END THEREFORE, that the said confederates may upon their several and respective corporal oaths, to be by them respectively taken on the holy Evangelists, true, full, perfect and distinct answers make to all and singular the premises, as fully and particularly as if the same were herein over again repeated, and they thereunto interrogated paragraph by paragraph, and set forth whether the premises are not true, in manner herein before stated, or in any other, and what manner, and with what variation of circumstances, and more particularly, that the said confederates may set forth and declare, whether all, or any, and which of the matters and charges herein before mentioned, are not true as herein before stated, and if not, how far do they, or any, and which of them, vary from the truth, and with what variation or difference in fact, circumstance, reference or relation, and whether the said S. J. did not execute such bond and warrant to the said F. H. as herein before set forth, for the purpose herein before

before mentioned, or any other, and what bond and warrant, for any, and what purpose, and did not the said H. execute such deed or agreement with the said T. as herein before stated, or any other, and what deed or agreement, and in whose hands, power or custody is the same now, was not a judgment entered on the said bond, perfected by the said S. J. to the said F. H. and was not the said judgment assigned to the said T. and upon what account, and for what purpose, did not your suppliant jointly with the said F. H. and others, execute such bond, with warrant of attorney for confessing judgment thereon, unto the said S. J. as herein before specified, for the purpose only, of indemnifying him from the demands of the said T. under the said bond executed by him to the said F. H. and the said judgment obtained thereon, and assigned to the said T. as aforesaid, under the before mentioned agreement, or for what other purpose, or what value or consideration did your suppliant get from the said S. J. for executing the same, did the said S. J. ever pay unto the said D. T. or any other person, and whom, any and what sum of money, on account of the said bond executed by him to the said F. H. as aforesaid, and when, in whose presence, and to what amount did he pay the same, were the said payments, or any, and which of them, made by the said S. J. antecedent or subsequent to the time on which it was agreed that your suppliant should be released from the bond perfected by him as aforesaid, to the said S. J. and how much was at that time actually due by the said F. H. to the said D. T. did the said S. J. and F. H. or either, and which of them, ever, and at what time particularly, borrow any, and what sum of money, from the said M. B. and what security was given or entered into for the same, were any, and what bills of exchange, notes, or other securities or effects, and of what nature or kind, to what amount, and by whom executed, given, lodged, or handed over by the said F. H. to the said S. J. or to any other person, and whom in trust for him and the said M. B. or either, and which of them by way of counter-securing the said money so borrowed from the said M. B. as aforesaid, or any, and what part thereof, was it not upon the credit of said securities, so assigned to and deposited with the said S. J. that he the said S. J. joined the said H. in a security to the said M. B. for the said twelve hundred pounds, had not the said H. in his possession previous to the said month of April, one thousand seven hundred

hundred and seventy eight, bills, notes and securities to the amount of two thousand pounds, or to any other, and what amount, and was not the said H. at the time when the said S. J. joined him in the said bond to the said B. in or reputed to have been, in affluent or creditable circumstances, and did he not continue so for a considerable, or any time, and how long after; and that the said confederates may set forth whether the said J. did not accept the securities herein before mentioned, as a consideration for his joining the said H. in said bond to the said B. and was it not on the credit thereof, and not otherwise, that he agreed to join the said H. in raising the said sum of twelve hundred pounds from the said B. and whether such list as herein before mentioned, of the said securities, was not made out, and such receipt as herein aforesaid, given by the said S. J. or any other, and what receipt, and whether the said S. J. did not well know, that in the beginning of the year one thousand seven hundred and seventy eight, your suppliant had on account of some ill treatment received from the said F. H. broken off all intercourse and connection with him, and declared to the said J. that he would not any longer remain as security for the said H. and whether your suppliant did not in the presence of C. W. esquire, since deceased, and of some other persons, and who by name, call upon the said J. and require to know how the account stood between the said H. and T. so as that your suppliant might cause any balance that might be due thereon, to be paid off forthwith, and thereby get himself discharged from said security, and whether the said J. did not thereupon assure your suppliant, and whether the fact was not so, that there was not then a greater balance due to the said T. from the said H. than a sum of one hundred pounds or thereabouts, and whether your suppliant did not thereupon in order to be extricated from his said security, then offer to pay the said balance of one hundred pounds to the said J. and whether the said J. did not refuse to accept the same, and to give up your suppliant's said bond, and whether his motive for so doing, was not that he apprehended if he should tear off your suppliant's name from the said bond, he would thereby cancel the whole bond with respect to the other obligors, and whether the said J. did not then in the fullest terms, release your suppliant from said bond, and declare he never would resort to your suppliant for or on account of his said security, or in what manner.

and

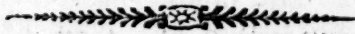
and to what effect, and before whom did the said S. J. express himself upon that occasion, and whether the said H. did not continue in good credit and circumstances for a year and an half, or any, and what length of time after such your suppliant's application, as aforesaid, to the said S. J. and at what time did your suppliant make the said application, and if the said J. had then given your suppliant notice, that the said H. was indebted to the said T. so considerably as he has since pretended, or that he had lent said H. a sum of one thousand two hundred pounds, in order to pay said T. and that he considered your suppliant's said bond as a security for said sum, might not your suppliant then, and for a great length of time afterwards, have resorted with success to the said H. and have compelled him to pay off all sums as far as your suppliant stood engaged for him, and thereby extricate your suppliant from his said security, and that the said confederates may set out what sums of money was due to the said D. T. at the time of his death, from the said F. H. and how much the executors of the said T. received thereof, and from whom particularly, and how much do they now claim to be due to them from the said H. and in what manner, and at what time and times respectively the same became due to them, and whether such executions as aforesaid, have not been delivered to the sheriff of the county of Cork, and at what time, and what sums are marked at the foot thereof, and what steps the said sheriff has taken in consequence thereof, and whether your suppliant has not executed to the said E. such securities at the time for such sums and for the purpose herein before mentioned, or for any other, and what purpose, and whether your suppliant did not shortly after, and long before any sale was had under said execution against your suppliant, pay the same, and whether the said J. did not cause an execution to issue against the said H. and for what sum was the same marked, and upon what security grounded, and whether any, and what sum has been levied, or any, and what goods and effects of the said F. H. has been sold by virtue thereof, whether the same have been sold for the best price that could be reasonably had for the same, and if not, why they were not sold to the best advantage, and whether the said E. did not proceed to sell the stock in trade of the said H. contrary to the wish and desire of the said S. J. who considering that same consisted of a great quantity of leather, then in preparation in tan-pits, would

would if suffered to be manufactured, produce a sum amply sufficient to discharge all his demands on said H. and whether the said J. for the reasons aforesaid, was not desirous to suspend the sale under the said execution, and why the said E. did not comply with such the wish and desire of the said J. and what were his views and motives in not doing so, and whether the same were not sold at one tenth part only, of the intrinsic value thereof, and whether the sum so levied has been paid over to the said S. J. by the said B. or E. or to any other person or persons whatsoever, and on what account, how or in what manner, or to what particular use or purpose has the same been applied, did not the said B. and E. hold such cant or auction of the interest of the said lands of V. as aforesaid, and did not the said B. hold the same for the purpose and design of coming at the possession of said lands for his own use, and in order to pay himself the money due to him from the said S. J. or how otherwise, and from what particular motive, and did not the said B. and E. on such cant, procure and fix several of their friends and acquaintance to bid for the said interest, and particularly, did they not concert previous to said sale, who were to be the bidders thereon, and among others did they not prefix and appoint B. W. of Waterford, gentleman, and the said B. C. the near relations of the said B.'s wife, to bid for said interest, and was it not at the express desire of the said B. and E. or either, and which of them, and in compliance with their or either of their directions, that the said B. C. bid the sum of six hundred pounds for the same, and was it not in trust for the said B. that the said C. bid for the same, or how otherwise, and was not the said interest worth a greater sum than six hundred pounds, did not the said B. E. and C. force the possession of said lands, at the time aforesaid, and were they not accompanied with a great number of armed men on that occasion, and how many particularly, and how particularly were they armed, and did not the said B. leave a great number of armed men on said lands, to defend for him the possession thereof, so illegally acquired as aforesaid, did not the said B. thereupon or immediately after, stock the said lands with his own stock, and has he not ever since occupied said lands, or who else has stocked or occupied the same, has the said B. C. paid any, and what sum to the said B. or E. on account of the said alledged sale to him, and when did he pay the same, was it not for the recovery of the

said B.'s own demand to said J. that he sold under the said J.'s execution, the interest in said lands, and has the said B. credited the said J. for said sum of six hundred pounds out of his demand to said J. how and in what manner hath the said B. been paid his said demand to said J. and by whom particularly, and when, and upon what occasion, have not the said B. and E. frequently solicited the said B. Y. and his agent, to grant them, or one of them, or to some other person, and whom, in trust for, or at the request of them, or some, and which of them, a renewal or new lease of said lands, have the said B. and E. paid the said head rent of seven pounds a year to the said B. Y. or to any person for his use, and if they have not, have they not declined so to do for the reasons and from the motives aforesaid, or from any other, and what reason or motive, and have they not prevailed on said I. Q. to permit such ejectment to be brought in the name of B. Y. as aforesaid, and was it not the said E. who actually prepared the same, and took charge thereof, and procured the said judgment by default to be had, and such habere as aforesaid to be issued, and executed as aforesaid, was it not to some trustee for the said B. that the said sheriff delivered such possession, and has not the said B. C. or E. or some, or one of them executed such bond as herein before mentioned, to the said B. Y. or to some person in trust for him, or any other, and what bond, and of what date, and for what sum, and for the purpose herein before mentioned, or for any other, and what purpose, and was not the said B. or some person in trust for him, at the time, and before the bringing of said ejectment, in possession of the greater part of said lands, and has not the said B. or C. or some other person in trust for him the said B. ever since the pretended execution of said habere, continued in the possession of the entire of said lands, or how otherwise, are not the said lands set, and to whom, and by whom, and under what leases, and for what term, and at what yearly rent, who are the lessors and lessees in such leases respectively, and who receives the rent of said lands, does the said M. B. receive any, and what part thereof, was there any, and what fine, gratuity or reward whatsoever, paid on the execution of said leases, and to whom, and by whom has the said B. Y. or his agent, and who, and at what time or times particularly, and by whom, been paid any money whatsoever, and what sum particularly, in any wise respecting or concerning the

the said lands of V. has not the said E. filed such bill as
aforesaid, in said court of Exchequer, and is not the
name of the said B. C. made use of as plaintiff therein,
merely in trust for said B. or how otherwise, was not such
bill entirely prepared by said E. and the counsel employed
by him, has not the said M. B. offered to restore to your
suppliant, as aforesaid, the said lands of V. upon being
paid such sum as should appear due to him on the foot of
said purchase, or how otherwise, has the said M. B. or any
other person employed or commissioned by him, offered
to sell the said B.'s interest in said lands, to any person or
persons, and to whom, and for what sum, or how other-
wise, and what interest has he or does he claim therein;
and that the said S. J. may before he answers this your
suppliant's bill, view in the hands of your suppliant's six
clerk or commissioners, according to his mode of answer-
ing, the list of the several securities, receipts and letters
herein before mentioned, and indorse his name thereon,
and set forth whose names, and of whose hand-writing
the names subscribed thereto, respectively are: and your
suppliant hereby waving all right at law, to any penalties
to which he might be entitled, under and by virtue of any
admission which may be contained in such answers of the
several confederates, that the said S. J. may be compelled
to come to a just and fair account with your suppliant,
touching his dealings with your suppliant, on the foot of
the bond so passed to him as a counter-security for his
guaranteeing the said T. and may be decreed to pay over
to your suppliant, such sums as shall upon the foot of
said account, appear to be justly and fairly due to your
suppliant, on the foot of said dealing, and that the said
M. B. C. E. and B. C. or such of them as shall appear to
have been in the possession of said lands of V. under the
sale made to them under said execution, may be obliged
to come to a just and fair account with your suppliant,
for the rents, issues and profits of said lands, from the
time your suppliant was so fraudulently dispossessed of the
same, and that your suppliant by the decree of this hono-
rable court, may be restored and adjudged to be entitled
to the possession of said lands, and from time to time be
guided therein, and that if any lease has been made by
the said B. Y. to the said M. B. C. E. B. C. or any of
them, the same may be deemed and taken to be a lease
made in trust for your suppliant, and that the necessary
parties may be obliged by the decree of this court, to
execute

execute an assignment of said lease to your suppliant, and that this may be deemed and taken to be an amended bill, and that the confederates may be respectively obliged to answer the same, upon the usual terms of being served with copies of said bill, and that your suppliant may have such other and further relief in the premises, according to equity and good conscience, and the nature and merits of his case, as to your lordship shall seem meet. May it therefore please your lordship, to grant unto your suppliant, his majesty's most gracious writ of subpœna, to be directed to the said S. J. M. B. C. E. B. C. and F. H. requiring and commanding them, and each and every of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in this honorable court, and then and there, true, full, perfect and distinct answers make, to all and singular the premises, upon their respective corporal oaths; and also your lordship's letter missive, to be directed to the said B. Y. requesting him at a certain day therein to be named, to cause an appearance to be entered for him in this honorable court, at the suit of your suppliant; and also his majesty's most gracious writ of subpœna, to be directed to the said B. Y. requiring him at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in this honorable court, and then and there, true, full, perfect and distinct answers make to all and singular the premises; and also his majesty's most gracious writ of injunction, to be directed to the sheriff of the county of Cork, thereby requiring and commanding him to put your suppliant into possession of the said lands of V. and that the said confederates may stand to and abide such further and other order, judgment and decree, as your lordship shall think fit to make in the premises, for your suppliant's relief; and your suppliant will pray.



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Readings and Observations on FRAUD, CIRCUMVENTION, and COVIN.

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1st.

A FEME who had 150*l.* given her by her brother the defendānt, upon her marriage gives a bond privately to her brother to repay that sum; the husband being dead without issue, the defendānt sued the plaintiff upon the bond at law, whereupon she exhibited her bill to be relieved against it, being a fraud by reason it was done without the privity of her husband. *Lord chancellor* ordered that the bond should be delivered up, for being once a fraud, no accident of death or course of time should alter the case; and the plaintiff was relieved notwithstanding it was her own agreement, being done in fraud of her husband. *Mich. 1687. Anon. S. C.*

2d.

Chancery may decree a conveyance to be fraudulent merely for being voluntary, and that without any trial at law. *Per all the lords commissioners*; and so they did *Trin. 1691, in White and Hussey et al', in chan. Prec. in chan. 13, 15.*

3d.

A. steals a young woman who had a considerable portion, which was in trustees hands; after the marriage her friends would not part with the portion, unless the husband would give security that it should be settled for the benefit of his wife; and it was agreed that it should be laid out in land, to be settled to the husband and wife, and the heirs of their bodies; and a judgment was given by the husband for this purpose. This agree-
ment

ment, though after marriage, shall not be considered as voluntary, so as to be set aside in favour of a creditor of the husband, on a bill brought by a creditor of the husband; but without costs, for, *per cur'*, if the husband himself had exhibited a bill against the trustees for the portion, the court would not have decreed it to him without making some such settlement. *East. 1691, Moor and Rycault, Prec. in Chan. 22.*

4th.

A. being to procure 1000*l.* for *B.* borrows it, and pays *B.* only 300*l.* and the remaining 700*l.* in goods, which prove worth little or nothing; and for securing the whole 1000*l.* both gave a recognizance; yet that being sued against *B.* he brought his bill, and had a perpetual injunction against the recognizance on payment of 300*l.* only, and interest, by reason of some circumstances of fraud in *A.* Decree affirmed by lord chancellor, *Hil. 1697, Smith and Loader, Prec. in Chan. 80. Brown's Rep. 149.*

5th.

A will as well as a deed may be set aside in Chancery for fraud or circumvention. *Cur'* clearly of this opinion. *Mich. 1700, in the case of Welby and Thornegh et Ux', etconi', Prec. in Chan. 123.*

6th.

A. being in an undue manner drawn in to execute a conveyance of his estate, a few months before his death makes his will, and thereby devises all his lands for payment of his debts; his creditors may set aside the conveyance, having a right in nature of an equity of redemption (which may be assigned) as the testator himself had. *Per lord keeper, Wright and the master of the rolls, though urged that it was in the nature of a chosen action, and not assignable. Hil. 1700, Blake and Johnson, Prec. in Chan. 142.*

7th.

If there be two dealers, and one of them is very much indebted to the other, and in order to get an abatement from him he makes him believe he is insolvent, by absconding, skulking, or shutting up shop, whereby the other has just cause to fear the loss of his debt, and thereby procures a release of an abatement, when in truth

truth the man was really solvent; the court will relieve against such release, &c. and this was agreed to have been often done, and the case of *Benny and Bonny* quoted for an instance; *secus* if the party had not just cause to fear the loss of his debt. *Mich. 13 W. 3. Monger and Kett, in Canc^y, 12 Mod. 558.*

8th.

A. surrenders the reversion in fee of copyhold lands to his eldest son in tail, remainder to his own right heir, in order to lessen the fine the son must have paid in case the reversion had come to him by descent from his father, he having it by this surrender as a purchase. Afterwards on the son's treaty of marriage with *B.* the father tells her friends that this copyhold was settled on his son as above, and therefore proposed a settlement of leasehold lands, which was made, and the marriage was had, and 2000*l.* portion paid. *Cowper C.* decreed the surrender to the son good; and said, that though it were at the first voluntary, yet upon his treaty of marriage it being regarded as the principal inducement thereto, it was now become valuable, and ought to be considered as if it had been but then surrendered to the son. *Hil. 1708, Kirk and Clark, MS. Rep.*

9th.

J. S. supercargo of a ship which was to go to the East Indies, having shipped on board several goods, borrowed of *B.* 600*l.* and gave a bottomry bond to pay 40*l.* per cent. in case the ship should reign three years; and at the same time made a bill of sale to *B.* of the said goods (which were invoiced particularly) and of the produce and advantage that should be made thereof; and this was in the nature of a security for the repayment of the said 600*l.* and the 40*l.* per cent premium upon the ship's reigning three years. The ship went her voyage, and these goods were sold, and with the money others bought, and those likewise were invested in other goods, and so there had been several barter and exchange of several sorts of goods. The ship after three years returned home richly laden with several sorts of goods, but *J. S.* died in his return home, and defendant, who was a creditor of his, by judgment for 1500*l.* obtained before the sale of these goods, takes out administration, and possessed himself

himself of the several goods returned home which belonged to J. S. B. brought his bill to have an account and discovery of those goods, and to have satisfaction for the produce and advantage that was made thereof. Lord chancellor *Cowper* was of opinion, that the trust of these goods appeared upon the very face of the bill of sale; that though they were sold to B. yet he trusted J. S. to negotiate and sell them for his advantage, and J. S.'s keeping possession of them, was not to give a false credit to him, but for a particular purpose agreed upon at the time of the sale; and 'tis true in case of a bankrupt, such keeping possession after a sale will make the sale void against his creditors by the statutes; and so for other sales by the statute of fraudulent conveyances; but here B. is presently entitled to the trust of these goods upon the sale, and to all the advantages consequential upon such trust, and may follow the goods for that purpose; and therefore decreed an account to be taken of the produce of those specific goods; and if that could be made to appear, it was to be liable to make satisfaction to B. for which purpose it was said at the bar, that the goods belonging to J. S. were marked with J. S. &c. and other marks to distinguish them from other goods; but if not, what fell into the bulk of J. S.'s personal estate in general would be liable to go in a course of administration, and defendant to be preferred in payment of his judgment before B. *Hil, 1709, Anon. MS. Rep.*

10th.

Suppressio veri, or *Suggestio falsi*, is either of them good reason to set aside any release or conveyance. *Per lord Harcourt. Mich. 1713*, in the case of *Broderick and Broderick*, 1 *Will. Rep.* 239, 241.

11th.

F. B. seized of an estate in fee, devised it to defendant, F. B. executed the will, but it was not attested in his presence by three witnesses. F. B. died, and defendant, finding that the will was void, for one hundred guineas paid to plaintiff, who was F. B.'s heir at law, procured from him a release, which recited, that F. B. by his last will duly executed, had devised his estate to defendant; and defendant thinking himself not safe with the release only, for fifty guineas more prevailed with the plaintiff to convey
the

the land by lease and release to one D. who was trustee for defendant, upon a valuable consideration, conveyed part to one P. who had not any other notice of the invalidity of the will, save that he heard it mentioned in common discourse. Plaintiff brought his bill against said defendant, D. and P. to have the release, lease and release delivered as fraudulently obtained; and it not appearing that the plaintiff at the time of his making the release, &c. knew that the will was bad, *Harcourt C.* decreed, that they should be delivered up; and it not appearing that P. was privy to the fraud, though he had heard of the invalidity of the will as above, it was agreed that he, upon receiving his purchase money with interest, should convey to the plaintiff, and should account for the rents and profits which he received, and be allowed what he had laid out in repairs, or otherwise. *Mich. 12 Ann. Broderick and Broderick et al', 4 Vin. Abr. 534, pl. 3.*

12th.

A. being parson of the parish of C. in Essex, and B. having lands in that parish, told A. that there was a Modus of 40s. per annum paid time out of mind for his lands in the parish; and to convince A. of it, he shewed a copy of a record in B. R. Temp. Eliz. where a prohibition was granted against the parson in court christian upon a suggestion of this Modus; whereupon A. agreed with B. to take 40s. per annum for the tithes of B.'s lands in that parish; but it appearing in the cause that B. did suppress part of the record wherein afterwards a consultation was granted, and thereby deceived A. and drew him into this agreement; for that reason the lords did make void the agreement; being obtained by suppressing the truth. *Mich. 12 Ann. cited in the case of Broderick and Broderick, in Canc', as the case of Dr. Dent and Buck in Dom. Proc', 4 Vin. Abr. 535. pl. 4.*

13th.

A. agrees with the East-India company to go as president to Bengal, and enters into a bond (with two sureties) of 2000*l.* penalty for performance of the articles, and a few days after he settles all his estate on trustees, and (*inter al'*) he declared the trust of a term for five hundred years, to be for the raising of 5000*l.* for his daughter's portion, payable three months after her marriage. The daughter

Q q

afterwards

afterwards married J. S. a gentleman of 700*l.* per annum, who, before his marriage, was advised by counsel that the portion was sufficiently secured, and who, afterwards on her death, had on her request expended 400*l.* on her funeral, but never made any settlement on her. A. embezzled 2600*l.* of the company's effects; the company cannot break through this provision in the settlement, there being no colour of fraud in it; and the articles do not bind the real estate but the bond only, so far as the penalty goes; therefore decreed the 5000*l.* to J. S. after payment of 2000*l.* to the company. *East* 1714, *East-India Company and Clavel, Prec. in Chan.* 377. *Gilb. Eq. Rep.* 37.

14th.

There being accounts current between A. and B. a goldsmith, B. gives out his cash note to C. for 5000*l.* and A. mortgages his estate as a collateral security for the money. B. gives C. 100*l.* for his favour in the matter, who keeps the cash note by him. Some time after the mortgage forfeited, B. becomes a bankrupt. A. prays relief, because C. neglected to turn the cash note into money, when he might have done it. It was directed, that an account be taken, how matters stood between A. and B. 10 Feb. 1717, *Mason and Lake*, cited as a *MS. Rep.* said to be lord *Harcourt's*, 13 *Vin. Abr.* 524. pl. 4.

15th.

A. makes an absolute conveyance to B. for 1500*l.* B. executes a defeazance upon payment of 1500*l.* within six years, and after, on marriage, settles it as an absolute estate on his wife and issue. There being proof that A. made the conveyance to enable B. to get a fortune, though that was another lady and not the wife B. really married, it was decreed that A. was bound as *Particeps Criminis*; and this decree was confirmed by eight lords against seven. *Cowper* and *Harcourt* against the decree; *Parker* for it. 21 Jan. 1718. *Webber and Farmer*, 13 *Vin. Abr.* 525. pl. 3. cited as a *MS. Rep.* said to be lord *Harcourt's* tit. *Fraud*, and says, there is added a note in the *MS.* that the wife's father had notice of the defeazance before the settlement made. *ibid.*

16th.

A. agreed for the purchase of timber, and A. and B. both enter into a bond that A. his executors and administrators

nistrators, should not cut down under such a size. It comes out that A.'s name was only made use of for B. in the agreement: B. cuts down timber under size; there can be no remedy at law against B. on this bond; but it is a fraud on the seller, and relievable in equity. 12 Mar. 1720, *Butler and Pendergrafs*, 13 *Vin. Abr.* 546, pl. 13.

17th.

In cases of fraud equity will relieve even against the words of the statute of frauds; as if one agreement in writing should be proposed, and another fraudulently or secretly brought in and executed in lieu of the former; in this, or such like cases of fraud, equity will relieve; but when there is no fraud, only relying upon the honor, word or promise of the defendant, the statute of frauds making those promises void, equity will not interfere. *Per Parker C. East.* 1720, in *casu Viscountess Montacute* and her husband *Sir Geo. Maxwell*, 1 *Will. Rep.* 620.

18th.

A release of an equity of redemption, obtained by misrepresentation, was set aside for that reason. 23 May 1721, *Kirwan and Blake*, cited as a *MS. Rep.* said to be lord *Harcourt's*, 13 *Vin. Abr.* 552, pl. 9.

19th.

A statute was made in Ireland, that all leases which should not be registered by such a day should be void. The respondent, who lived in the remotest part of Ireland, not having notice of this act, did not register within the time; whereupon another lease was made, and registered, to one who had notice of the first lease, and an ejectment was brought upon it; but the respondent was relieved, because the statute which was made to prevent fraud shall never be used as a means to cover it. *Note*; this act was appointed to be read at every quarter sessions and assize. 23 Feb. 1722, lord *Forbes* and *Deniston*, cited as a *MS. Rep.* said to be lord *Harcourt's*, 13 *Vin. Abr.* 550, pl. 9.

20th.

In case of great fraud, equity will not direct an issue. 5 Feb. 1722, *White and Lightburn*, cited as a *MS. Rep.* said to be lord *Harcourt's*, 13 *Vin. Abr.* 555, pl. 7.

21st.

It is no objection, that the parties to fraud have their remedy at law, and may bring actions for money had and received for their use; for in cases of fraud equity has a concurrent jurisdiction with the common law, matter of fraud being the great subject of relief in equity. *Per his honor, Trin. 1723, in the case of Colt and Woolaston and Arnold, 2 Will. Rep. 154, 156.*

22d.

One of seventy-two years of age conveyed lands of 40*l.* a year for an annuity for his life of 20*l.* a year, and who lived but two years after, but it was set aside upon a bill brought by the heir at law, it appearing that the old man was weak, and easily to be imposed upon. *Mich. 1723, Clarkson and Hanway et al', 2 Will. Rep. 203.* This decree was confirmed by lord Macclesfield. *ibid. 206.*

23d.

Obligor on payment of 20*l.* to the obligee, who was superannuated, and very weak and forgetful, and incapable of transacting any business, procured a bond and notes for about 250*l.* to be delivered up to him on pretence of poverty, and kindred to the obligee; but neither being proved, he was ordered to account for the bonds and notes. *Mich. 11 Geo. 1, Lucas and Adams, 9 Mod. 118.*

24th.

A. intending to marry B. gave a bond to B.'s father for 500*l.* payable at a certain day, but defeazance not to be put in suit, but for security of the daughter, in case any misfortune should happen to A. to be paid before other creditors. This is a fraudulent bond on the face of it, to disappoint creditors; so held *per King C. Trin. 1725, Wifes's Case, Select Cases in Chan. 46.*

25th.

Lord Commissioner Jekyll took a difference betwixt a deed and a will gained from a weak man, and upon misrepresentation or fraud; for if a will be gained from a weak man, and by false representation, this is not a sufficient

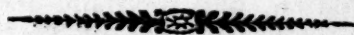
sufficient reason to set it aside in equity, as was determined in the case of the late duke of *Newcastle's* will between lord *Thanet* and lord *Clare*, and in the case of *Bodvil* and *Roberts*; but where a deed (which is not revocable as a will) is gained from a weak man upon a misrepresentation, and without any valuable consideration, the same ought to be set aside in equity. *East*. 1725, in the case of *Janes* and *Greaves*, 2 *Will. Rep.* 270.

26th.

Equity will never countenance demands of an unfair nature; in this case the bill was to have an allowance for attending at auctions to enhance the price of goods; nor will equity suffer them to be set against fair and just demands in an account; and a cross-bill for that purpose was dismissed with costs. 6 *Mar.* 1726, *Walker* and *Gascoigne*, cited as a *MS. Rep.* said to be lord *Harcourt's*, 11 *Vin. Abr.* 544, pl. 13.

27th.

A. being much indebted, six hours before his decease gives 600*l.* for the benefit of his younger children, this is not fraudulent as against creditors; though it would have been so of a real estate or chattel real; though the court would not have taken it to be so *pro confesso*, but would have directed an issue to try it. July 14, 1729, *Duffin* and *Furness*, *Select Cases in Chan.* 77. And so it was done in lord *Somers's* time, and, on issue directed, determined fraudulent before lord chief justice *Holt*. *ibid.* 78.



A POSSESSORY BILL.



To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship, your suppliant and daily oratrix D. W. of the city of Dublin, widow, that some time in the year one thousand seven hundred and seventy eight, your suppliant entered into a treaty with W. D. of the city of Dublin, tanner, which treaty ended in an agreement, in pursuance whereof, indented articles of agreement, bearing date the thirty first day of October, one thousand seven hundred and seventy eight, were made and duly executed by and between the said W. D. and D. W. whereby the said W. D. in consideration of the sum of one thousand pounds, to be paid by your suppliant as a fine, and of the yearly rent therein mentioned, did agree to demise all that new dwelling house, messuage or tenement then erecting and building by the said W. D. situate in Castle-street in the city of Dublin, with a coach-house and stable to be erected by the said W. D. at the ere of said house, which said house and premises are mered and bounded as herein after mentioned, TO HOLD from the twenty ninth of September then last, for three lives therein named, and the survivor, and for the life of such other person as should be added during the term of sixty nine years, from the twenty fifth of March, one thousand seven hundred and seventy eight, at the yearly rent of one hundred pounds, payable half-yearly; and the said W. D. did thereby covenant, at his proper costs and charges, to finish and complete the said dwelling house, coach-house and stable, or out offices, in good, sufficient and workman-like manner, according to the form, plan and dimensions therein mentioned and exprest; and your suppliant sheweth, that there was contained a covenant in said articles, that
the

the walls of the yard should be of a sufficient height, and that there should not be any lights or windows in the rere of the houses in Fishamble-street, then building by the said W. D. which should look into the yard of your suppliant's dwelling house, as by the said articles of agreement, in your suppliant's custody, and to which she refers, may appear; your suppliant further sheweth, that in pursuance of such articles, the said W. D. soon afterwards caused the said dwelling house, and coach-house and stable at the rere thereof, to be completely finished according to the form, plan and dimensions expressed therein, and likewise finished and completed the houses then building by him in Fishamble-street, without any lights or windows in the rere thereof, pursuant to the before mentioned covenant, and accordingly by indented deed of release, bearing date the tenth day of January, one thousand seven hundred and eighty, the said W. D. in consideration of the said sum of one thousand pounds, and for the other considerations therein mentioned, did demise, release and confirm unto your suppliant, in her actual possession then being, by virtue of the bargain and sale therein mentioned, **ALL THAT** the aforesaid new dwelling house, messuage or tenement, then lately erected and built by the said W. D. with the yard and backside behind the same, and the coach-house and stable at the rere thereof, situate in Castle-street aforesaid, the said demised dwelling house containing in breadth, in front to Castle-street aforesaid, [*here recite description of premises*] **TO HOLD** from the twenty fourth of June then last, for three lives therein named, and the survivor of them, and for the life or lives of such other person or persons as should during the term of sixty seven years, to be computed from said twenty fourth of June, he added, pursuant to the covenant for renewal, in said deed contained, at the yearly rent of one hundred pounds, payable half-yearly, as therein mentioned, as by a counterpart of said deed of release, which was soon afterwards duly registered, now in your suppliant's custody, and to which she refers, may appear; your suppliant further sheweth unto your lordship, that under and by virtue of the articles of agreement herein before recited, and of the lease made in consequence thereof, your suppliant entered into the possession and enjoyment of said demised premises, immediately or soon after the execution of said lease, and hath continued ever since the year one thousand seven hundred and eighty, to the
time

time of filing this your suppliant's bill, being three years and upwards, in the actual, quiet and peaceable possession of said dwelling house, coach-house and stable, with the appurtenances, and also of the ground situate at the rere of said dwelling house, and of the several walls enclosing the same, and enjoyed the same without any manner of interruption, until within these six months last past, within which last mentioned time, she has been disturbed in the possession and enjoyment thereof, as herein after mentioned; your suppliant further sheweth, that S. L. of the city of Dublin, gentleman, hath under some title derived from the said D. very lately, that is to say, within these six months last past, or thereabouts, come into possession of an house fronting to Fishamble-street, in the said city of Dublin, the rere whereof next adjoins to the rere of your suppliant's said house and premises, and which forms part of the western boundary of said premises, in your suppliant's possession as aforesaid, and which house your suppliant charges, is one of the houses mentioned in the said articles of agreement, to be then building by said D. in Fishamble-street, and in which no lights or windows were to be made at the rere, and which was afterwards completed and finished by said D. accordingly, without any lights or windows at the rere thereof, yet your suppliant charges, that the said S. L. although he well knew your suppliant's several rights and possession aforesaid, not regarding the same, hath within these two months last past, that is to say, in the month of July last, caused the whole roof of his said house to be opened and taken off, and is now proceeding by force to build, and hath partly within said two months, by force, and without your suppliant's consent, built with timber, partly on the upper part of said house, and partly over the yard belonging to said house, which lay between the same and said premises in your suppliant's possession, two additional stories, that is to say, two several rooms or apartments on the top of each other, which two several rooms or apartments are, as aforesaid, extended across part of the yard belonging to said house, in the possession of said L. to the said wall, forming the western boundary of said premises in your suppliant's possession, and which rooms or apartments rise above the wall so enclosing your suppliant's said ground; and the said S. L. by force, and without your suppliant's consent, and contrary to said agreement, hath put or caused to be put into the eastern wall of said rooms or apartments,

apartments, three lights or windows, which look into your suppliant's said premises, whereby your suppliant is deprived of that privacy and retirement which she before enjoyed, and by said agreement was entitled to enjoy in said premises, so as aforefaid demised to her; and the said building carrying on by said L. extends in length thirty six feet, is of the heighth of six feet above said wall, forming the western boundary of said premises in your suppliant's possession, and in depth twenty feet or thereabouts, and obstructs the free passage of the light and air to said premises in your suppliant's possession, so that your suppliant is thereby deprived of the enjoyment of the light and air of said premises, in such manner as she enjoyed the same for three years and upwards next before said disturbance; and your suppliant sheweth, that such rooms or buildings are partly supported by several beams of timber, the end and greater part of several whereof, the said L. by force, and without your suppliant's consent, caused to be struck or forced into and rested in your suppliant's said wall, which is her sole and exclusive property; and the said L. hath in like manner caused other parts, or the ends of such beams to be struck or forced into, and rested in the chimneys of the house now in the occupation of T. H. of Fishamble-street aforefaid, apothecary, and next adjoining to said L.'s house, and also adjoining your suppliant's said premises, by which means your suppliant's said house and premises are rendered unsafe, and the same being rendered apt or liable to catch fire, whereby a large range of buildings, fronting to Castle-street and to Fishamble-street, would most probably be consumed, to the great nuisance and annoyance of the public in general, and of your suppliant, and the several other persons inhabiting said houses in particular, and particularly so as your suppliant charges, that she hath been informed by men of skill and knowledge in such matters, and charges the fact to be, that if any of the chimneys of the said T. H.'s house, should by any accident take fire, the same would communicate to the beams supporting said building so carrying on by said L. and so on to said premises in your suppliant's possession; and farther your suppliant charges, that the said S. L. means and intends to convert the same into a place of devotion for Methodists, and a place for holding concerts of music at night, which from the quantity of lights necessary to be used therein, must of course render the vicinity of said rooms or apartments building

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by said L. very dangerous to said premises in your suppliant's possession, and the more so, as the said rooms or apartments are built and formed entirely of timber; your suppliant sheweth, that she and several other of the inhabitants adjoining, have lately applied, and caused application to be made to the said S. L. to take down said building so illegally erected as aforesaid, and to cease carrying on the same, or at least to stop up the said lights or windows in the rear thereof, and take the beams of timber out of your suppliant's said wall, which he absolutely refused and refuses to do, but insists that he will carry on the same, and make what lights or windows he pleases at the rear thereof, and make what breaches in your suppliant's said wall he thinks proper, by which means, your suppliant and the other inhabitants interest will be considerably lessened, if not totally destroyed, and your suppliant will lose considerably, and your suppliant charges her title to said premises and walls, so as aforesaid demised to her by the said W. D. is still in being and undetermined; **TO THE END THEREFORE**, that your suppliant may be restored to, and quieted in such possession and enjoyment of said premises and walls, as she held and enjoyed the same before the said disturbance, until she shall be thereout evicted by due course of law, or the further order of your lordship in that behalf, and that the said S. L. and his confederates, may be restrained from carrying on the building as aforesaid, and that the same may be abated by the sheriffs of the city of Dublin, and that the said confederates may stand to and abide such order, judgment and decree as your lordship shall think fit to make for your suppliant's relief in the premises. May it therefore please your lordship, to grant unto your suppliant, his majesty's most gracious writ of injunction, to be directed to the said S. L. and his assistants, requiring and commanding them and each of them, to stop and surcease from proceeding on said building, and from giving your suppliant any manner of disturbance in the possession and enjoyment of said premises, demised to her by said S. L. in such manner as she held and enjoyed the same in and before, &c. and to restore to your suppliant, the possession of said wall, forming the western boundary of said last mentioned premises, and of the remainder of said last mentioned premises, or so much thereof, as they have evicted your suppliant of, and to abate, pull down and remove so much of said building, as have already been erected, &c.

INTER-

INTERROGATORIES for the Examination of the DEFENDANT in the foregoing *Possessory Cause*.



Personal Interrogatories to be Exhibited to S.L. in this Cause.



1st. Interrogatory.

DO you know D. W. complainant in this cause? and how long have you known her? upon what occasion did such your knowledge commence? do you know W. D. of city of Dublin tanner? and when and upon what occasion did such your knowledge arise or take place? declare all you know, have heard and do believe, touching this interrogatory, together with such your knowledge and belief at large?

2d. Interrogatory.

Were not indented articles dated the 31st. October, 1778, or at any other and what time, made and duly, or how otherwise, executed by and between said W.D. and D.W.? and did not said W. D. in consideration of the sum of 1000*l.* or any other and what sum, and at a yearly rent of 100*l.* therein mentioned, thereby demise to said D. W. that new dwelling, messuage or tenement then erecting and building by said W. D. situate in Castle-street, in city of Dublin, and in the pleadings in this cause mentioned, with a coach-house and stable to be erected by said W. D. at the rear of said house, to hold from 29th. September then last, for three lives therein named and the survivor of them, and life and lives of such other person or persons as should be added during a term of 69 years from the 25th of March in said year 1778? and is there

not a covenant contained in said articles that said D. should, at his proper costs and charges, finish and complete said dwelling-house, coach-house and stable, and out offices in a good sufficient and workmanlike manner, according to the plan, form and dimensions therein mentioned? and also a further covenant, that the walls of the yard should be of sufficient height, and that there should not be any lights or windows in the rere of the houses in Fishamble-street, then building by said D. which should look into the yard of complainant's dwelling-house, or how otherwise? and was not said articles of agreement on 27th. of August, 1779, or at any other time, duly registered in the proper office in this kingdom? *Declare, &c.*

3d. *Interrogatory.*

Did not said D. soon afterwards and when, in pursuance of said articles, cause said dwelling-house and coach-house, and out offices at the rere thereof, to be finished according to the form, plan and dimensions expressed and agreed on between said parties, or in what other manner? and did he not likewise finish and complete houses then building by him in Fishamble-street, without any windows in the rere thereof, pursuant to the before mentioned covenant? or how otherwise, and do you not reside in one of said houses? *Declare, &c.*

4th. *Interrogatory.*

Did not said D. in pursuance of said articles by indented deed of release bearing date the 10th. January, 1780, or of any other and what date, in consideration of 1000*l.* or any other and what sum, and for the considerations therein mentioned, demise, release and confirm to said D. W. said dwelling house, messuage or tenement in the foregoing interrogatory mentioned, then lately erected and built by said W. D. with a yard and back-side behind same, and coach-house at the rere thereof, situate in Castle-street aforesaid, by such description as in the pleadings in this cause mentioned, or by any other and what description, to hold to said D. W. her heirs and assigns, from the 24th of June then last, for three lives therein named and the survivors of them, and for the life and lives of such person or persons as should, during the term of 69 years, be added, pursuant to the covenant for renewal therein contained, at the yearly rent of 100*l.* or how otherwise? and was not
said

said deed of release, on the 28th of January, or at any other and what time, duly registered in the proper office in this kingdom, or how otherwise? *Declare, &c.*

5th. Interrogatory.

Did not complainant, under and by virtue of the articles of agreement in the foregoing interrogatory mentioned, and of the lease made in consequence thereof, or how otherwise, enter into possession or enjoyment of the demised premises immediately, or soon after said execution of said lease, or since said year 1780? and when particularly? and has not complainant continued ever since, and how long particularly, in the actual, quiet and peaceable possession of said dwelling-house, coach-house and stable with apartments? and also of ground situate at the rere of said dwelling-house, and of several walls enclosing same? and hath she not been so in possession thereof for three years and upwards, next preceding the disturbance given to her therein by you, or how otherwise? did not complainant also enjoy said premises without any manner of interruption until within these six months last past, or until within six months next preceding the filing of complainant's bill in this cause, or how otherwise? and if she was at any time before interrupted or disturbed in possession thereof? by whom? and when? and upon what occasion was she so interrupted and disturbed. *Declare, &c.*

6th. Interrogatory.

Have you not, under some and what title from the said D. within these six months last past, or within six months preceding filing complainant's bill in this cause, or at what time particularly, come into possession of an house fronting to Fishamble-street in said city? and does not the rere thereof next adjoin to the rere of complainant's said house and premises, and form part of the boundary of said premises in complainant's possession, or how otherwise? is not said house one of the houses mentioned in said articles of agreement to be then building by said D. in Fishamble-street, and in which no lights or windows were to be made at the rere? and were not said houses among the rest the house now in your possession, afterwards and when particularly completed and finished by said D. accordingly without any lights or windows at the rere thereof? and were there any, and what number
of

of lights and windows at the rere of said house at the time said D. set or agreed to set said house to you, or at the time you entered into possession thereof? and if there were any windows therein, where were same situated? were they near the ground, or far from it? and how far? and what was the size and dimensions thereof? and did same look into said premises in complainant's possession? *Declare, &c.*

7th. Interrogatory.

Did you not well know or did you not hear of complainant's several rights and possession aforesaid? and which of them, and in particular as said articles are registered, might you not have known or heard of covenants therein contained, previous to your entering into such possession of said house in your possession? and did you, previous thereto, make any and what search in the register's office in this kingdom? and by whom? if not, why did you not do so? did you not at the time you entered into the treaty with said D. for said house, now in your possession, or before you actually concluded your agreement for same, and before he executed any lease thereof, and when, first take notice, see or observe, that there was no window in the rere thereof, which looked into said premises in the possession of the complainant? if you did see or observe the same, did you think it remarkable or unusual? and what did you then hear and believe to be the reason that there were no windows in the rere wall? had you at any time and when particularly, previous to the execution of the said lease of said house made to you by said D. or to the time of your entering into possession thereof? any and what conversations and conversation with said D.? or any other and what person relative to said rere wall, or the circumstance of there being no windows or lights therein looking into said premises in complainant's possession, or to any such effect? and if lights and windows were necessary to you, why did you take said house with such windows therein? *Declare, &c.*

8th. Interrogatory.

Did you not in the month of July last, or at any other time, and when, cause the whole, or some, and what part of the roof of your said house, to be opened and taken off?

And

And did you not by force, and without complainant's consent, or in any other, and what manner, proceed to build? And have you not built partly with timber, or how otherwise, particularly on the upper part of said house, and partly over the yard belonging to said house, which lay between the same and said premises in complainant's possession, or how otherwise? Two, or any, and what number of additional stories, that is to say, two, or what other number of rooms or apartments on the top of each other? Were not the said two several rooms or apartments extended across part, and what part of the yard belonging to said house in your possession, to the wall, forming the western boundary of said premises in complainant's possession, or how else is the same situated and built? Do not the said rooms or apartments rise above, and how high above the wall so enclosing complainant's said ground? Did you not by force, and without complainant's consent, and contrary to said agreement, or how otherwise, put or cause to be put into the eastern wall of said rooms or apartments, or where else, three, or what number of lights or windows? And do not the same look into complainant's said premises, or into any other, and what place? And did you at any time, and when, first apply to complainant for permission to put lights or windows into the eastern wall, or any other, and what part of said premises? And if you did make such application, did said D. consent thereto? And was such application made before the said lights or windows were put into said wall? Is not said D. W. by means of said lights and windows, deprived of that privacy and retirement which she before enjoyed, and by said agreement was entitled to enjoy in said premises, so as aforesaid demised to her, or how otherwise? Is not said building of the several dimensions in the pleadings in this cause mentioned, or of any other, and what dimensions? And does not the same obstruct, and in what degree, the free air to said premises in complainant's possession? And is not complainant by means aforesaid, or by any other, and what means, deprived of the enjoyment of the light and air to said premises in complainant's possession, in such manner as she enjoyed the same for three years and upwards next before the said disturbance, or any other, and what time? *Declare, &c.*

9th. *Interrogatory.*

Are not such rooms or buildings partly, and in what manner, supported by several, and how many beams of timber?

timber? And did you not by force, and without complainant's consent, or in what other manner, cause the end and great part of several beams, and how many thereof, to be struck or forced into, and rested on complainant's said wall? And is not the said wall complainant's sole and exclusive property? Did you not in like manner, cause other parts or ends of such beams, and how much to be struck into and rested in the chimneys of the house of T. H. of Fishamble-street aforesaid, or in what other place? And is not the said house next adjoining to your said house, and also adjoining complainant's said premises, or where else situate? Are not complainant's said house and premises rendered unsafe by means aforesaid, or how otherwise? And is not said building altogether, or principally built with timber, and apt and liable to catch fire? And would not thereby a large range of buildings, fronting Castle-street and Fishamble-street, most probably be consumed? And is not the same a great nuisance and annoyance of the public in general, and of complainant, and of several other persons inhabiting said houses in particular, or how otherwise? If any of the chimneys of said H.'s house should by any accident take fire, would not the same probably communicate to the rooms supporting said building, or to what other parts or part thereof, and so on to said premises in complainant's possession? *Declare, &c.*

10th. Interrogatory.

Do you not mean and intend to convert the same into a place of devotion for Methodists? And have you not had some, and how many meetings of Methodists, or any other, and what sect or society therein, and for what purpose? And do you not likewise intend the said building for a place for holding concerts of music at night? And have you not had likewise, a considerable, or any, and how many concerts therein lately, and when particularly? Are there not a great quantity of lights necessary to be used on such meetings and concerts? And do they not render the vicinity of said rooms or apartments building and built by you, very dangerous to said premises in complainant's possession? Are not said rooms or apartments built or formed entirely, or what part particularly, of timber? *Declare, &c.*

11th. Interrogatory.

Have not complainant, or several, or any, and how many of the inhabitants adjoining, lately, and when, applied

applied and caused application to be made to you, to take down said building, and to cease carrying on the same, or at least to stop up said lights or windows in the rere thereof, and take the beams of timber out of complainant's said wall? And did you do so? And if so, when and at what time particularly? Did you do so before or after you heard that complainant had filed his bill in this cause? And if you did so before complainant's bill was actually filed? Did you do so before you knew or heard that such bill was preparing? Did you not refuse to comply with the terms of such application, or any part thereof? And why did you so refuse? Have you not proceeded and finished said building, with such lights and windows in the eastern wall thereof? And do you not insist that you will carry on said building, and make what lights or windows you please in the rere thereof, and make what breaches in complainant's wall you think proper? How many stories high is said building from the ground at this time? Is it not by the means aforesaid, or by any other, and what means, complainant and the other inhabitants interest in said premises, in their possession respectively, are considerably, or how otherwise lessened? And will not complainant lose considerably, or how otherwise, by means thereof? *Declare, &c.*

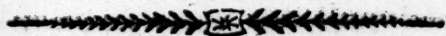
12th. Interrogatory.

Is not complainant's title under said articles and deed of release to said premises and walls, so as aforesaid demised to her by said W. D. still in being and undetermined? Or if the same is determined, how and when did the same determine? *Declare, &c.*

13th. Interrogatory.

Were not you served with the injunction of this court, requiring you to give and restore to complainant, the quiet and peaceable possession of said new house or tenement, with the coach-house and stable thereunto belonging, with the appurtenances, and to abate, pull down and remove said building, or so much thereof as has been erected, which said several premises are situate in the city of Dublin, and that you should not molest or disturb the said complainant or her assigns in such possession of the premises, but permit her from time to time, to enjoy such quiet and peaceable possession of the premises, with the

appurtenances, without any impediment or disturbance whatsoever, according to the tenor of said order, until complainant should be thereout evicted by due course of law, or the further order of this court to the contrary? Have you obeyed said injunction, in any, and what manner? And if not, why have you not obeyed the same? Declare all you know, have heard, or do believe touching this interrogatory, with the reason of such your knowledge and belief thereof at large?



*The Answer of Defendant to the Personal Interrogatories
filed in this Cause, the Day of* 1788.



To the first Interrogatory.

S AITH, he does know D. W. complainant in this cause, and has known her 3 years or thereabouts, to the best of respondent's recollection and belief, and saith, the commencement of such knowledge was occasioned by said W.'s being in respondent's neighbourhood, and said W. having several times come to respondent's shop for articles in the linen drapery line. Saith, he does know W. D. esq; by interrogatory called brewer, and saith, he hath known said D. since the month of December, 1780, and saith, such his knowledge was occasioned by respondent's having gone to said D. to treat with him for a lease of the house in which respondent now lives, situate in Fishamble-street, in the city of Dublin; and saith, his cause of knowledge appears by this his answer, and to said interrogatory respondent further saith not.

To the 2d. Interrogatory.

Saith, he knows not but has heard and does believe, that the indented articles of agreement bearing date about the 31st day of October, 1778, were made and duly executed by and between said W. D. and said D. W. and that said W. D. in consideration of 1000*l.* and at the yearly rent of 100*l.* therein mentioned, did thereby demise to said D. W. the new dwelling-house, messuage or tenement then erecting and building by said D. situate in Castle-street, in the city of Dublin, and in the pleadings mentioned, with a coach-house and stable to be erected for said D. at the rear of said house, to hold from the 29th day of September, then last past, for three lives and the survivors of them, and of the life or lives of such other person or persons as should be added during a term of 69 years from the 25th of March, 1778. Knows not but has heard and does believe, that there is a covenant contained in said articles, that said D. should, at his proper costs

costs and charges, finish and complete said dwelling-house, coach-house and stable and out offices in a good, sufficient and workmanlike manner, according to the plan, form and dimensions therein mentioned, and also a covenant that the walls should be of a sufficient height, but cannot set forth from knowledge, credible hearsay or belief, never having heard, save from complainant's bill and an affidavit which she made in this cause. whether there was or was not any covenant in said articles, that there should not be any windows or lights in the rere of said houses in Fishamble-street, then building by said D. which should look into the yard of complainant's dwelling-house, but saith, if there was any such covenant, same was not complied with to respondent's belief, inasmuch as said D. did actually, as respondent believes, finish one of the houses in Fishamble-street, which he was then building, with windows in the rere thereof, and in which respondent hath been since he swore his affidavit in this cause; and saith, said windows so in the rere thereof, look into the yard of complainant's said house, and respondent never did hear that complainant complained of said windows. Saith, he hath since said interrogatories have been administered to him, seen the memorial of said articles in the registry office in this kingdom, and saith, said memorial contains the covenants herein before set forth, and doth not contain any covenant on part of said D. that there should not be any lights or windows in the rere of said houses, then building by said D. Admits, that said articles were registered on the 27th of August, 1779, in the proper office in this kingdom, but humbly insists, that if such articles did contain any covenant respecting lights or windows in the rere of said houses, the memorial thereof did not give any or sufficient notice of such covenant to respondent, who was a total stranger to said articles, covenants and agreements therein contained, was no party thereto, and never heard thereof until complainant had filed her bill in this cause; saith, his cause of knowledge is set forth in this his answer, and further to this interrogatory, saith not.

To the 3d. Interrogatory.

Saith, he believes, but otherwise knows not, that said D. did soon afterwards, but when respondent cannot set forth from knowledge, credible hearsay or belief, cause said dwelling-house, coach-house, stable and out offices at

at the rere thereof to be finished, but whether he did or did not do so, in pursuance of said articles, or according to the form, plan and dimensions expressed or agreed on between said parties, or in what manner he so finished same, respondent cannot set forth from knowledge, credible hearsay or belief, other than that respondent believes he finished same in a good and sufficient workmanlike manner; but respondent is a stranger to the form, plan, dimensions, covenants and agreements in said articles contained, further or otherwise than as before set forth in his answer to the second interrogatory. Denies it to be true, that said D. did finish or complete the houses then building by him in Fishamble-street without any windows in the rere thereof; and saith, pursuant to said alledged covenant, if any such covenant ever did exist, respondent verily believes said D. finished one of the houses then building by him in Fishamble-street with several windows in the rere thereof, which look into complainant's yard. Admits, he does reside in one of said houses, and that the house in which he so resides was finished without windows in the rere; and saith, he has herein declared all he knows, has heard, or does believe touching this interrogatory, and that his cause thereof appears from this answer, and further to this interrogatory saith not.

To the 4th Interrogatory.

Saith, he has heard and believes, but otherwise knows not, that said D. by indented deed of release bearing date the 10th. of January, 1780, in consideration of 1000*l.* and for the considerations in said deed mentioned, did demise, release and confirm to said D. W. the house, messuage or tenement in the foregoing interrogatory mentioned, then lately built and erected by said D. with the yard and backside behind same, and coach-house at the rere thereof, situate in Castle-street, by such description as in the pleadings in this cause mentioned, to hold to said D. W. her heirs and assigns, from the 24th of June then last, for the time and term in this interrogatory mentioned, at the yearly rent of 100*l.* but whether he executed said deed of release in pursuance of said articles or not, respondent cannot set forth from knowledge, credible hearsay or belief, other than that respondent believes, for the reasons in his answer to the third interrogatory mentioned, that if any clause was contained in said articles, that there should

should not be any windows in the rere of the houses then building by said D. in Fishamble-street, which should look into complainant's premises, such deed was not executed in pursuance or according to said articles; and saith, said deed of release does not contain any clause or covenant, that there should not be any windows which should look into complainant's premises in the rere of said houses. Saith, he hath heard and doth believe, that said deed was registered about the time in this interrogatory mentioned in the proper office in this kingdom; saith, he hath declared, &c.

To the 5th Interrogatory.

Saith, he believes but knows not that complainant by virtue of the deed of release before mentioned, entered into possession and enjoyment of the demised premises, but whether she so entered by virtue of said articles of agreement in the foregoing interrogatory mentioned, or whether said lease was made in consequence thereof, cannot set forth from knowledge, hearsay or belief, otherwise than that respondent believes she did not enter under and by virtue of said articles of agreement, or any lease made in consequence thereof, if said articles contained any clause against windows being in the rere of said houses in Fishamble-street which should look into complainant's premises, believes she could not have entered into said premises by virtue of any articles containing any such clause, inasmuch as respondent believes, she must, upon her entry into said premises, have observed, that there were in the rere of the house next but one adjoining to respondent's house, and which was one of the houses then building by said D. in Fishamble-street, at the time said articles are alledged to have been executed, as respondent believes, and consequently one of the houses in which complainant alleges there was not any windows to have been made looking into complainant's yard, and believes, if said lease had been made in consequence of such alledged articles, there would have been inserted in said lease a clause or covenant of same purport and effect as was contained in said articles, and therefore respondent does believe, that if any such clause or covenant was expressed in said articles, as is alledged, same was given up on the part of complainant, at the time she executed the deed of release in this interrogatory mentioned, and therefore believes she did
not

not enter by virtue of said alledged articles, but if such was her intention, it was her own negligence and omission, or the negligence and omission of those concerned for her, not to have such covenants inserted in her said lease, and therefore respondent ought not to be answerable for the same. Saith, he does not know but believes, complainant, immediately after the execution of said lease, entered into the quiet and peaceable possession of all said premises demised to her by said deed of release, and continued ever since the year 1780 in the actual, quiet and peaceable possession of said dwelling-house, coach-house and stable, with the appurtenances, and also of the ground situate at the rere of said house, and of several walls enclosing same, and has been so in possession thereof for the space of 3 years and upwards, next preceding the disturbance given to her therein by respondent, in the manner as herein after set forth, and until within these six months last past. Saith, if it can be deemed an interruption, complainant was interrupted by respondent in the manner following, and not otherwise; that is to say, about the 28th of July last, when respondent was erecting the buildings in the pleadings mentioned, one or two small ends of timber were lodged in the wall forming the western boundary of complainant's said house, until said building could be rendered staunch and secure; and respondent saith, said building having been rendered sufficiently secure, as soon as complainant complained of such intrusion, respondent caused said timber to be removed and the wall repaired, but whether said wall is or is not part of the property of complainant, or is a party wall to which complainant and respondent are mutually entitled, or whether the same can be deemed an intrusion or interruption, respondent cannot set forth, the same being matter of law. Saith, complainant never was in quiet, peaceable or undisturbed possession of the premises demised to her, agreeable to the clause alledged to be contained in said articles of agreement; on the contrary, saith, she hath been all along prevented from enjoying the same under said clause by said D. having built or caused to be built many windows in the rere of one of the houses in Fishamble-street, which look into complainant's said yard, and in which T. S. E. J. lately dwelt, and in which K. H. now resides; saith, he hath declared, &c.

Saith, he did not come into possession within six months last past, or within six months preceding filing the bill in this cause, of an house fronting Fishamble-street in said city, but saith, that under and by virtue of deeds of lease and release, bearing date the first and second days of January, one thousand seven hundred and eighty one, and made and duly executed by and between said D. and respondent, respondent on the said second day of January, in consequence of a sum of fifty six pounds, eighteen shillings and six pence, actually and *bona fide* paid by respondent to said D. and at the yearly rent of forty pounds, became seized and entered into the possession of an house, situate, lying and being at the east side of Fishamble-street in the city Dublin, to hold to him, his heirs and assigns, for the time and term of the natural lives and life of T. T. and J. T. two sons of W. T. and E. T. daughter of said W. and the survivor of them, and the life and lives of every such person and persons as should from time to time, or at any time thereafter be added, to the time and term of said demise, for the space of sixty seven years next ensuing, and hath continued in possession of said house and premises ever since. Admits the rere thereof does next adjoin to the rere of complainant's said house and premises, and form the western boundary of said premises in complainant's possession. Saith, he cannot set forth from knowledge, credible hearsay or belief, never having heard save by bill, and by complainant's affidavit filed in this cause, whether said house is or is not one of the houses mentioned in said articles of agreement to be then building by said D. in Fishamble-street, and in which no lights or windows were to be made looking into complainant's premises at the rere, respondent being a total stranger to such clause, although since the commencement of this suit, he frequently applied to said D. and to complainant, for liberty to read the same, but never could obtain a sight thereof from either of them. Admits, the house which is now in his possession, was finished and completed without any lights or windows in the rere thereof, or any lights or windows in the eastern wall of said house, save as herein after mentioned, but when particularly the same was finished or completed, respondent cannot set forth from his knowledge, hearsay or belief, other than that the same was so completed before the first day of January, one thousand seven hundred and eighty

eighty one, but saith, that the other houses were not completed or finished without lights or windows in the rere thereof. Saith, one of said houses was finished and completed with nine windows in the rere of said house, three of which windows look into the yard of complainant's said premises, and some of which command a view even into the parlour of said complainant's house. Admits, no windows were situate in the rere of the house in respondent's possession save one, about in size and dimension, and saith, the same was about from the ground, and did not look into said premises in complainant's possession, at the time said D. set said house to respondent, or at the time he first entered into possession thereof. Saith he hath declared, &c.

To the 7th. Interrogatory,

Saith, he did not well or at all know of complainant's several rights or possession aforesaid, or any covenant, save the covenant herein before and after mentioned particularly, nor did he ever know or hear of said articles, until said buildings in the pleadings mentioned, was nearly finished, nor does respondent believe he could have known or heard of the covenants in said articles contained, altho' the same were registered, inasmuch as the memorial in the registry office is in the common form, and does not specify any of complainant's said rights or covenants, save as herein before in respondent's answer to the second interrogatory mentioned. Admits, he did not make either by himself or any other person, any search in the registry office in this kingdom, previous to his entering into possession of said house, and saith, the reason why he did not make such search was, because at the time he agreed to take said house, said D. informed respondent that he had entered into certain covenants with complainant, by a lease which he had made to her of the premises in pleadings mentioned, and therefore would give the counterpart thereof to respondent, to have his lease drawn in pursuance thereof. Saith, said D. did accordingly give said counterpart to respondent, who had his lease perfected thereby, and in pursuance thereof, respondent by his said lease did covenant with said D. for him, his heirs and assigns, that if at any time during the said term, said premises to him demised, should be converted into or made use of by respondent, his heirs or assigns, for an ale-house, pastry-cook, apothecary or druggist, baker, chandler, soap-boiler, spirit,

spirit, huxtry-shop or grocer, that then respondent, his heirs or assigns, should and would pay said D. forty pounds a year additional rent, or the sum of one hundred pounds in one payment, at the election of said D. and saith, a draft of said lease so prepared, was given to said D. who shortly after returned the same, saying he had shewn it to his attorney, who approved thereof. Saith, he never knew, heard of, or imagined that complainant had any other right, claim or privilege, save what was expressed in the deed of lease made to her by said D. and humbly insists, that if he had even known or heard of any prior articles being executed between complainant and said D. he could not have received any further, fuller, or even so full a notice or information from the memorial thereof as registered, and saith, he rested satisfied with seeing said lease, and believes so would almost any other man in his situation, and therefore respondent did not make any search in the register office in this kingdom. Admits, that at the time he entered into the treaty with said W. D. for said house now in his possession, and before he actually concluded his said treaty for the same, and before he executed to him any lease thereof, he took notice and observed there were no windows in the rere or eastern wall thereof, which looked into the premises in the possession of complainant, but when particularly he first discovered the same, cannot set forth from recollection, but believes he observed the same the first time he was in said house; but saith, he did not think the same any way remarkable or unusual, because all the rooms in said house were streetward, and had windows in front, and therefore respondent did suppose that the builder did not judge any windows in the rere necessary, and the more so, as many people as respondent believes, would object to back and front windows, which might render the rooms cold and damp. Saith, he did not hear any reason why there were not windows in the rere of said house, and believed the reason why there were no windows in said wall, is as herein before mentioned. Saith, he never had any conversation whatever with said W. D. previous to the execution of said lease, or with any other person, to the time of respondent's entering into the possession of said house, relative to said rere wall, or circumstances of there being no windows or lights looking into the premises in complainant's possession, or to any such effect, and saith, the reason why he took said house was, because he considered it his right, if he found

found windows in the rere necessary to him, to make them at his pleasure. Saith, he hath declared, &c.

To the 8th. Interrogatory.

Admits, he did in the month of July last, cause the whole roof of his house to be taken off, and did, but without any force or violence, and without complainant's consent, proceed to build, and did build partly with timber on the upper part of said house, and partly over the yard belonging to respondent's said house, and which lies between the same and the premises in complainant's possession, one entire story, with one small room and turret over it, and saith, the same doth extend across the yard belonging to the house in respondent's possession, to the wall forming the western boundary of said premises in complainant's possession, but saith, no part of said building is extended across any of the premises belonging to complainant, but the same is entirely confined within the limits of the boundaries of the premises belonging to respondent. Saith, said building rises higher than the wall enclosing complainant's said ground, but does not rise over said wall, nor is there any part of respondent's premises over said wall, and saith, that the roof of respondent's house, as it formerly stood previous to respondent's building any additional story, was about forty six feet nine inches higher than the wall which divides respondent's yard from that of complainant, and that the roof of respondent's said house, where the whole new story is built, rises above the old roof four feet four inches, and where the little room is built at the south end, the whole additional height is not more than about six feet seven inches, and the top of the turret rises above the said room above five feet, so that where the additional building is lowest, the same does not exceed the original height of respondent's house, more than four feet and four inches, nor where it is at the highest, more than fifteen feet eleven inches, and therefore saith, the height of this respondent's house as it now stands, is where it is lowest, about fifty one feet one inch, and where it is highest, sixty one feet eleven inches higher than said wall. Saith, he did without complainant's consent, but without any force or violence, put into the eastern walls of said rooms, four windows, and that the same look into complainant's yard, but whether making said windows, was or was not contrary to said agreement, respondent cannot set forth from knowledge, credible
hearsay

hearsay or belief, being an entire stranger to said agreement, if any such there ever was, but humbly insists, if any such agreement was, the same must be considered as canceled or relinquished on the part of complainant, who took a lease subsequent to said articles, and that without any such covenant being contained therein, and more so, inasmuch as respondent is a third person, and not a party, or in any wise privy to said articles, and never had notice of their contents. Saith, he did some time in or about

having an intention to open a window in a closet belonging to respondent's house, waited on complainant, to know would it be disagreeable to her that said window should look into her yard, and she signifying that it would, he made the window at one side instead of making it at the rere: saith he did not make such application from any idea he entertained of want of power or right to make said window at the rere, but it being a matter of indifference in what part said window was placed, respondent made such application out of mere civility, not wishing to disoblige any neighbour, and admits said application was made long previous to making the windows complained of, and saith, complainant did not then mention any thing of the covenants or articles now alledged relative to such lights or windows. Saith, complainant is not deprived of any privacy or retirement which she before enjoyed. Saith, ever since complainant came into the possession of her said house, there were and now are, exclusive of respondent's windows, at least one and twenty windows at the rere of different houses, all of which command a view of the rere of complainant's said premises, and some of which have a view into the very apartments of complainant's house, and therefore respondent believes complainant could not enjoy any privacy or retirement before the making of the windows now complained of, but whether she was entitled to enjoy any, or if any, what privacy or retirement, under the articles or agreement in this interrogatory mentioned, respondent cannot set forth from knowledge, credible hearsay or belief. Saith, the dimensions of said building, are in length about thirty feet six inches, and in breadth about fourteen feet. Saith, he doth not believe that said building does in any degree obstruct the free passage of light or air to the premises in complainant's possession, the rere of complainant's house and of defendant's forming an obtuse angle, and complainant's having open the whole of, &c.

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in the front, and at the rere a view of, &c. and inasmuch as the highest part of respondent's house, is at the side where complainant never had any window, but saith, if said building does in any manner obstruct the free passage of the light or air to the premises in complainant's possession, the diminution is in a degree so small, as to be imperceptible to the keenest or most delicate sensation. Saith, he hath declared, &c.

To the 9th Interrogatory.

Saith, said rooms or buildings are partly supported by several strong beams of timber, some of them placed upright and some of them placed in an horizontal position, but how many beams, respondent cannot set forth from knowledge, hearsay or belief, the same being now covered over; and saith, that it being found necessary, in order to support said building until it should be rendered perfectly staunch and secure, it was found necessary to secure the same by fixing the ends of two beams in the wall in the bill mentioned; admits, he did without force or violence, but without complainant's consent, lodge two or three small ends of timber, and no more, in the wall in the pleadings mentioned, but whether such wall is or is not the whole and exclusive property of complainant, or whether it is a party wall belonging equally to complainant and respondent, the same being matter of law, cannot set forth. Saith, he did in like manner and for the same purpose, cause the ends of two small pieces, and no more, to be lodged in the chimney of the house now in the occupation of M. in Fishamble-street, and in no other part of said house, is next adjoining respondent's and complainant's said houses; but saith, complainant's said house and premises are not rendered unsafe by the means aforesaid; saith, as soon as said building was rendered staunch and secure, said beams became unnecessary, and were immediately withdrawn, both of the wall and out of the chimney, and the same were thoroughly and completely repaired, of which complainant had notice from respondent before he was served with any order in this cause, or even knew or heard of same being commenced. Saith, said building is not altogether but is principally built with timber, but saith, greatest care has been used in covering it both inside and outside thickly with plaister, and roof and entire outside is weather slated, and therefore respondent does not believe the same is
liable

liable to take fire more than any other house, or even so apt as houses which are wainscoted, and saith, several builders and other mechanics are of the same opinion; does not believe said buildings is a great or any nuisance or annoyance to the public in general, or to complainant, or to several or any persons inhabiting said house; and saith, and humbly insists, if the same was a nuisance, complainant would have sufficient remedy at law, and ought not come into a court of equity; and saith, said buildings became absolutely essential for the preservation and safety of respondent's said house, inasmuch as the chimneys of complainant being a great deal higher than those of G. M. or of respondent's; said G. finding herself much inconvenienced thereby, on account of frequent smoke which annoyed her and her lodgers, she determined to raise the chimneys of her house to as equal or nearly as equal height as those of complainant, and respondent being informed of her intention, and knowing if she carried the same into execution without respondent also raised his chimneys, he would be subject to the same inconveniences as said G. then complained of, therefore respondent and said G. agreed to employ the same bricklayer, and to raise them at the same time and to the same height; saith, after the same were so raised, they became extremely dangerous, the broad part of said chimneys being exposed to storms which blew from south and south-west, and if said chimneys should at any time have been blown down, they would have destroyed the roof of respondent's house, and respondent and family would, in all probability, have been dangerously bruised, or perhaps killed. Saith, that if the chimney of said G. M. should by any accident take fire, yet the same would not probably communicate to the beams which support said building, or any part thereof, none of said beams having any connexion with said chimney, the ends which were fixed in said chimney being long since removed, and therefore believes the premises in complainant's possession are not in any danger there from.

To the 10th. Interrogatory.

Saith, he does not mean or intend, and never did mean or intend to convert the same to a place of devotion for Methodists, or any other sect or society; and saith, he hath not had any meeting of Methodists, or of any other sect or society therein, save those of his own family.

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who respondent admits are Methodists; Saith, many false and groundless reports have been circulated, that said buildings was for a conventicle, and that a person was to preach out of the turret window to people in the street, and other rumours not more true than ridiculous, and verily believes, complainant is actuated more by a blind intolerant zeal than by any other motive, and that this suit has been wholly commenced and carried on more from a desire of persecuting respondent on account of his religious principles, than from any real regard to privacy so boasted of. Saith, he does not and never did intend said buildings for a place for holding concerts of music, either by night or day, neither has respondent ever had any concert therein, nor would said buildings answer for such purposes, same being divided into rooms too small to contain any such assembly. Saith, he does not believe, that either in meeting of Methodists or at concerts, there are greater quantities of light necessary than are usual at other meetings, and believes, the quantity of lights necessary to be used on these as well as on all other occasions, depends upon the largeness or smallness of the place designed to be illuminated, but as no such meetings are intended to be held therein, such meetings do not and cannot render the vicinity of said rooms and apartments, built by respondent, very or at all dangerous to said premises in complainant's possession, such meetings and concerts having no existence, save in the idea of complainant or inventive genius of her counsel; saith, said buildings were neither intended for a conventicle or a music-hall, but respondent being a teacher of astronomy, and also being employed by Mr. S. W. to regulate a table of tides, and the rising and setting of the moon for his almanack, and said almanack being, as respondent heard and believes, held in very high estimation by mariners, particularly inasmuch as it frequently determines them whether or not they may with safety attempt crossing the bar, a matter on which the lives and property of thousands are peculiarly involved, respondent thought himself bound in duty to himself and to the public, to be careful in having said calculations as correct as possible, and therefore caused said buildings to be erected for the purpose of having an observatory for better examining the rising, culmination and setting of heavenly bodies, upon which the calculation of a tide-table entirely depends. Saith, said buildings is formed principally,

principally, but not altogether, of timber, the chimneys being all built of bricks, and saith, the walls which are formed of timber are preserved in the manner herein before mentioned, and therefore are as safe as any walls can be, to the best of respondent's knowledge, information and belief.

To the 11th Interrogatory.

Saith, complainant neither by her bill, nor any other inhabitants adjoining, or any other person, ever applied or caused application to be made to respondent to take down said building, or to cease carrying on the same, although respondent hath been credibly informed and believes, that complainant hath gone about from house to house endeavouring to stir up and inflame the minds of the neighbours against respondent; and saith, said M. applied to respondent to remove the ends of timber out of her chimney, and with which request respondent immediately complied, and said M. then informed respondent that complainant had alarmed several of her lodgers with groundless apprehensions, insomuch that she feared they would quit her house; and complainant has also, although a woman of good fortune, and better able to bear losing in a law suit than respondent is to support the same, even if he should get the better therein, lately gone about soliciting and endeavouring to procure subscriptions to carry on this suit against respondent, and several of the neighbours have expressed their surprize to respondent, that complainant should make such complaints about a matter which they did not consider of any consequence. Admits, she did apply to respondent to stop up said lights or windows in the rere thereof, and to take out the beams of timber out of said wall; saith, he did not stop up said lights, but offered to put up boards in order to accommodate complainant, so high as that no person should be able to look out of said windows into complainant's premises, which offer, respondent saith, he made not from any idea he entertained of want of right in respondent to have said windows open, but merely from a wish to accommodate complainant; saith, immediately on complainant's applying to him to have the timber removed out of her said wall, he gave notice to complainant that he would have the same removed, and desired she would send some person to see that the same was so removed and said wall perfectly repaired; saith, that on complainant's
omitting

omitting or neglecting to send any person for that purpose, respondent did cause said timber to be removed and wall repaired, of which he sent her notice on last, and saith, the same was so removed and such notice given before he knew of complainant's bill being filed, or before he heard or knew said bill was preparing, or that she had any intention of filing the same, but believes said bill was actually filed, though no notice was given thereof to respondent, before said timber was removed or such notice given by respondent. Saith, he did refuse to stop the whole of said windows, but did not refuse to take the timber out of complainant's wall, on the contrary, he did immediately comply with the application made to him for that purpose; saith, he did refuse to stop up said windows because he considered such application to be unreasonable, and such as respondent believes he was not bound either in law or equity to comply with. Saith, he has proceeded on and finished said buildings with such lights and windows in the eastern wall thereof; saith, he does not now insist in carrying on said buildings, the same being compleated. Saith, he does not and never did insist on making what breaches in complainant's wall he thought proper, but did insist he had a right to make what windows he pleased in the rere of said buildings, considering such right to be well founded; but saith, that for the purpose of ascertaining whether he had such right or not, he did offer complainant to leave the same to the determination of any two builders, gentlemen or lawyers, to be nominated between them, to which proposal complainant never gave any answer. Saith, since the commencement of complainant's suit, respondent wrote a letter to complainant in order to avoid litigation and expence, and had the same delivered to her by a very respectable gentleman, in order that the same might have more weight, by which letter he offered to lay every matter in dispute to the decision of a lawyer of first character both for ability and integrity, and agreed to be bound by the opinion of such lawyer; but such was the perseverance of complainant, that she would return no answer to said letter, but on the contrary, ordered her interrogatories in this cause to be immediately filed, so that respondent humbly hopes and submits to the court, that he has during the whole of this business, done every thing becoming a man not inclined timidly to relinquish rights to which he considered himself entitled, nor with obsti-

nately to pursue any measure not warranted by justice and the laws of his country. Saith, said building is now five stories high from the ground, with kitchens under ground, and is just equal in height and number of stories as the house adjoining his, in which G. M. now lives, over which is one room and a turret, which respondent believes cannot be properly called stories; and saith, the highest part of all his said building does not exceed the height of said house in complainant's possession. Saith, he does not believe, that by the means aforesaid, or by any means, either complainant or the other inhabitants in said premises respectively, are considerably or at all lessened, or that complainant will lose considerably or at all by means thereof, save what she may lose by costs of this suit, if same shall be decided in favor of respondent.

To the 12th Interrogatory.

Knows not whether complainant's title to premises aforesaid under said articles, is or is not undetermined, but believes for reasons aforesaid, that her title, if any she had under said articles, was determined at the time the deed of release was executed, and believes, complainant's title under said deed of release to said premises and walls so as aforesaid demised to her by said A. is a subsisting title and undetermined.

To the 13th Interrogatory.

Saith, he was served with the injunction of this honorable court, requiring as in this interrogatory mentioned, and admits, he did not obey the same; and saith, the reason he did not obey the same, was because he was advised said injunction was a matter of course, and only in nature of a process, and that he would fulfil the intention thereof, by entering an appearance, which he accordingly did; saith, he hath declared, &c.

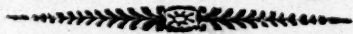
DECREE of a POSSESSORY CAUSE.



A. K. Esq; and C. E. Plaintiffs. P. M. Esq; Defendant.

THIS cause coming on to be heard this day on a contempt, upon opening the matters it appeared to the court, that on or about the eighteenth day of August, one thousand seven hundred and ninety, the complainants exhibited their bill in this honorable court, praying to be restored to the quiet and peaceable possession and enjoyment of the mill-race or water-course of Drumcondra in the county of Dublin, and it also appeared to the court, that by an order, bearing date the twentieth day of August, one thousand seven hundred and ninety, it was for the reasons therein mentioned, ordered, that an injunction directed to the defendant, should be and was thereby awarded, to restore the complainants to, and from time to time to quiet them and their assigns in the actual, quiet and peaceable possession and enjoyment of the water-course and mill-race of Drumcondra, situate in the county of Dublin, the same to continue until the complainants should be thereout evicted by due course of law, or the further order of this honorable court to the contrary; that pursuant thereto, an injunction accordingly issued, directed to the defendant, under the seal of this honorable court, and the said defendant having been duly served therewith, he appeared thereto as on an attachment, and submitted to be examined on personal interrogatories, and the complainants on or about the fourth day of September, one thousand seven hundred and ninety, having exhibited personal interrogatories in this cause, the said defendant on or about the eleventh day of September, one thousand seven hundred and ninety, filed his answer thereto, and witnesses were examined on the part of the complainants and defendant, and publication regularly passed, and a day for hearing being appointed, accordingly this cause came on to be heard as to the said contempt, in the presence
of

of counsel learned in the law, on both sides, whereupon and on reading the said injunction, the said defendant's answer, the several proofs and evidences in this cause, and on full debate of the matter, the right honorable the lord chancellor of Ireland was pleased to declare, that the defendant was not guilty of the contempt laid to his charge; and doth therefore order, and it is accordingly this day, that is to say, Wednesday the ninth day of March, one thousand seven hundred and ninety one, **ORDERED, ADJUDGED AND DECREED** by his lordship, that the complainants bill in this cause, and all and every the matters and things therein contained, be, and the same are hereby dismissed with costs; and it is further ordered, that the said injunction so as aforesaid awarded against the said defendant, be, and the same is hereby dissolved; and that it be, and is hereby referred to C. T. esquire, one of the masters of this honorable court, to tax the said defendant's costs accordingly.



READINGS and OBSERVATIONS ON POSSESSORY BILLS.



THE nature of these possessory bills, and the course of proceeding on them, are thus explained in *Howard's treatise on the rules and practice of the equity side of the court of Exchequer in Ireland*, p. 304. *Brown's cases in Parliament*, vol. vii, p. 540.

The possessory, or injunction bill, is a summary method of proceeding, which hath been for many years past practised by courts of equity in this kingdom; and is used for the restoring of persons to the possession of their lands, who have been forcibly or fraudulently dispossessed, or for quieting parties in possession, according to the different circumstances of the case.

And these bills are very frequent in this kingdom, by reason that by the many rebellions and troubles which have happened here from time to time, the Protestants were robbed and plundered, and their houses burnt, with their effects therein; by which means their deeds and titles have been lost or destroyed, which rendered the possession the best title to many estates. And therefore it was found necessary to guard that possession against fraud or force, and to restore the person forcibly or fraudulently dispossessed, until the right could be tried by due course of law. Wherefore, if it appears to the court, that the person who has been dispossessed or disturbed, has had a peaceable and quiet possession for three entire years before the filing of the bill, save the force or disturbance complained of, they will restore him, as possession is the semblance of right; and the party giving the disturbance, shall be left to his
remedy

remedy in the ordinary course of law, either by an ejectment, or otherwise, as he shall think most proper.

But where a landlord brings his bill against the tenant, for holding over after his term is expired, which is a forcible, or rather a fraudulent detainer; as where a person had made a lease for seven years to a tenant, the landlord or lessor, the day the seven years are expired, or the day after, demands the possession of the tenant or lessee, and he refuses to deliver it, the landlord need not make an affidavit of a triennial possession, and a title still in being; for in this case, the bill is founded upon the fraud, in which case courts of equity have an original jurisdiction; for the tenant is considered in equity, as a trustee for the landlord; and upon this trust and confidence between the landlord and tenant, it is deemed a fraud if he refuse to give up the possession, or return it when his term is expired: but the landlord is to make it appear by affidavit, that such a demise was, that the term in that demise is expired, and that the tenant holds over his term; and thereupon a bill is to be framed, with a prayer therein to be restored, and an injunction for that purpose, to be put into possession of the lands so demised.

So when a party has been in possession for seven years as above, and before that seven years be expired, he may have got a further term, suppose of ten years, from his landlord, in that case the landlord cannot have an injunction; because though the seven years be expired, yet the subsequent agreement for ten years is a continuation of that possession, which was first given for seven years: and if the landlord should force or disturb the tenant in his possession, he, upon filing a bill and setting forth his case, would be quieted by injunction, upon proper affidavits of the matter, against his landlord.

But in these suits, it seems that there is no necessity to go into the right, or the title, but into the question of the possession only, so that the plaintiff has a title still in being; and a feasible title will be sufficient: and in a late case between *sir Fitzgerald Aylmer* and others, plaintiffs, *Barnwell*

well Fitzgerald and others, defendants, which depended in Chancery, before the late chancellor lord viscount *Jocelyn*, upon a possessory bill, an issue being directed, upon the trial at the assizes, the plaintiffs were suffered to go into evidence of the original right and title to the lands in question, whereupon the jury found a verdict for the plaintiffs: but upon shewing this matter to the court of Chancery, his lordship was pleased to set aside the verdict, and ordered a new trial; and afterwards upon the second trial, the plaintiffs not being suffered to give evidence of any matter, except such as tended to shew the triennial possession, the jury found a verdict for the defendants; and the plaintiffs having applied to the lord chancellor Bowes for a new trial, it was refused; and the cause being afterwards heard, an injunction went to the sheriff, with costs.

In the case of *Luttrell* against lord *Irnham*, the following instances of this proceeding between landlord and tenant, were certified from the register's book of the court of Chancery in Ireland, *Holt v. Reilley*, 24th February, 1758. *French v. Wade*, 29th June, 1758. Lord *Annesley v. Radford*, 16th June, 1763. *Cullen v. Dillon*, 28th June, 1770. *Parsons v. Butler*, 25th June, 1772. *Cunningham v. Mason*, 2d July, 1772. *Nicholson v. M^r Kiernan*, 19th November, 1772. *Evans v. Fitzpatrick*, 10th July, 1773. Lady *Shelburne v. Tracy*, 13th July, 1773. *Maine v. Hicker*, 15th July, 1773. *Higginbottom v. Power*, 20th July, 1773. *Gorman v. Brown*, 11th May, 1775. See *Brown's cases in Parliament*, vol. vii, p. 541.



Bill to perpetuate the Testimony of Witnesses.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship, your suppliants and daily orators, H. M. of Grange, in the county of Donegal, esquire, and D. M. otherwise T. otherwise B. his wife, that W. T. esquire, deceased, late husband of your suppliant D. being in his life-time, and at the time of his death, seized to him and his heirs, of and in several messuages, lands, tenements and hereditaments, situate, lying and being in the counties of Cork, Carlow, Galway, and city of Dublin, and elsewhere in the kingdom of Ireland; and the said W. T. being so seized, and of sound and disposing mind and memory, did on or about the fifteenth day of January, which was in the year of our Lord, one thousand seven hundred and eighteen, duly make, publish and declare his last will and testament in writing, in the presence of four credible witnesses, in manner and in the words following, to wit, "In the name of God, amen," &c. "signed, sealed and published by the said W. T. as his "last will and testament, in the presence of us, who in "his presence have hereunto subscribed our names," as in and by the said last will and testament, duly signed, sealed and published by the said W. T. in the presence of the said in manner before mentioned, and by them subscribed in the presence of the said W. T. as aforesaid, relation being thereunto had, and to which for more certainty, your suppliants crave leave to refer themselves, may appear; and after the making and publishing the said will, which is all of the proper hand-writing of the said W. T. that is to say, the said messuages, lands, tenements and hereditaments, and the said will being duly made and published when the said W. T. was of sound and perfect mind, memory and understanding, the same ought

ought to stand and be fulfilled and performed, and your suppliant H. in right of your suppliant D. ought to have possession and enjoy all the messuages, lands, tenements and hereditaments so as aforesaid demised unto your suppliant D. BUT NOW SO IT IS, may it please your lordship, that J. T. esquire, who is the heir at law of the said W. T. doth pretend and set up title to the said lands and premises, and give out in speeches, that the said W. T. did not make such last will and testament as aforesaid, or if he did, that he was not of sound and disposing mind, memory and understanding, at the time of the execution thereof, and at other times gives out that the said will was not duly executed, and that he the said J. T. will defeat and avoid the said will, at least when all the witnesses to the same shall be dead, and the said J. T. is encouraged in his said pretences, because the said S. L. one of the witnesses to the said will, lately departed this life in the island of Jamaica; *in tender consideration whereof*, and forasmuch as the rest of the said witnesses to the signing, sealing and publishing of the said will, and who can testify the truth of the premises, are aged and infirm, and if they should happen to die before they are examined thereunto, the said J. T. will endeavour to frustrate and make void the said will, and for that your suppliants cannot examine them for preservation of their testimony, for proof of the said will, without the aid and assistance of this honorable court; **TO THE END THEREFORE**, that the said last will and testament may be produced and proved by your suppliants in this court, and the evidence; testimony and deposition of the said E. J. J. D. and B. T. touching the same, and also of M. W. of the city of London, esquire, touching the death, signature and hand-writing of the said S. L. deceased, to the said will, may be herein for ever preserved, and that the said J. T. may upon his corporal oath, true and perfect answer make to all and singular the premises, and particularly whether he doth not know or believe; that the said W. T. made such will and writing, and duly executed and published the same in manner aforesaid, and whether the said W. T. was not of sound and disposing mind, memory and understanding, at the time of the making and publishing thereof; and your suppliants may be at liberty to examine the said E. J. J. D. and B. T. to the proof of the said will, and the said M. W. to the proof of the death, signature and hand-writing of the said S. L. for perpetuating their testimony

to same, upon the interrogatories hereunto annexed. May it please your lordship, to grant unto your suppliants, his majesty's commission under the seal of this honorable court, directed to such persons as your lordship shall think meet, for examining the said witnesses upon the said interrogatories; and also his majesty's writ of subpœna, to be directed to the said J. T. thereby commanding him at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in this honorable court, then and there to make answer unto all and singular the premises as aforesaid; and your suppliants as in duty bound will ever pray, &c.



Readings and Observations on Bills to perpetuate the Testimony of Witnesses.



HE who would examine witnesses *in perpetuam rei memoriam*, must exhibit his bill, and thereby shew his title, and the antiquity of his witnesses, and then pray a commission to examine them, and a subpœna against the party concerned, to shew cause to the contrary if he can. *Vide Practical Register in Chancery 31.*

If the defendant shews cause to the contrary within fourteen days, the plaintiff shall not proceed. *Vide Practical Register in Chancery 32.*

If he does not shew cause, the plaintiff shall proceed to the examination of witnesses; and the court will give articles for the examination. *Vide Practical Register in Chancery 32.*

[A man may bring a bill to perpetuate testimony, where he cannot bring a bill for relief without waving the penalty. *E. Suffolk v. Green, 7. 1739. 1 Atkyns 450.*]

[Plaintiff is entitled to perpetuate testimony on an usurious contract, tho' he does not offer to pay what is really due. *Ibid.*]

But

But if the plaintiff prays relief, his bill shall be dismissed, *2 Vent.* 366.

Yet he may examine witnesses to prove a promise, &c. which is to be performed after the death of A. *R. 1 Rot.* 383 *C.*

This bill lies to prove a *Modus decimandi*. *1 Ver.* 185.

But such bill to prove a right to a common, way, &c. before a trial, will be dismissed. *1 Ver.* 308, 312.

Or, to prove a will against a purchaser without notice. *R.* upon a plea, *1 Ver.* 354.

Or, to examine witnesses where there is no impediment to a trial at law. *R.* upon a demurrer. *1 Ver.* 441.

[Tenant in tail out of possession cannot bring bill to perpetuate testimony, till he has recovered possession by ejectment; and demurrer for this cause would be allowed. *Brandlyn v. Ord, M.* 1738. *1 Atkyns* 571.]

So a bill by the devisee of a person, now a lunatic, to prove *in perpetuam rei memoriam*, will be dismissed. *1 Ver.* 106.

The witnesses may be examined by an examiner of the court. *Vide Practical Register in Chancery* 36.

Or the court may appoint commissioners, in which the defendant may join, if he pleases. *Vide Practical Register in Chancery* 34.

In the Exchequer, if the defendant does not appear, being served with process, but is in contempt, the plaintiff upon motion, shall have a commission to examine witnesses *de bene esse*. *Rules and Orders in Exchequer* 13. Rule 34.

If the defendant appears, he may join in the commission if he will, and cross-examine the witnesses, if he gives the names of commissioners, within four days after the order for a commission. *Rules and Orders in Exchequer* 13. Rule 34.

If the defendant afterwards makes answer, the plaintiff shall reply, and examine *de novo*, the witnesses before examined who are alive, and upon the return of the commission, there shall be publication of the depositions thereby taken, with the depositions of the witnesses before examined, who were dead before the second commission. *Rules and Orders in Exchequer* 13. Rule 34.

In Chancery, no witnesses shall be examined but the aged, or impotent. *Vide Practical Register in Chancery* 31.

[A witness tho' neither old nor infirm, may be examined before answer, on affidavit that he alone is privy to the forgery of a deed. *Shirley v. Earl Ferrers, M.* 1733. 3 *P. W.* 77.]

And if the defendant shews good exceptions against a witness,

340 *Readings on Bills to perpetuate Testimony of Witnesses.*

witness, or other cause for the staying of the proceeding, the commissioners ought not to proceed, but to certify such matter with the commission. *Vide Practical Register in Chancery* 32.

And the commissioners ought to certify whether the defendant appears or not. *Vide Practical Register in Chan.* 32.

Whether there was an affidavit before them of notice given of the time and place of the execution. *Ibid.*

The depositions shall not be read during the life of the witness, without consent or order of court. *Vide Practical Register in Chancery* 35.

And such order shall be upon affidavit, that the plaintiff is to have a trial, to which the witnesses cannot come. *Vide Practical Register in Chancery* 35.

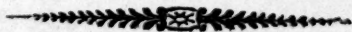
[Plaintiff shall not have leave to examine witnesses *de bene esse*, because they are going to the East-Indies, if they are his servants, and he might keep them at home. *East-India company v. Naish, M. 1732. Bunb. 320.*]

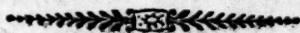
And if the court allows the use of the depositions, a master shall open the commission and consider them, and then the plaintiff if he will, may exemplify them, and by order of court, give them in evidence in another court. *Vide Practical Register in Chancery* 35, 6.

And after such publication, the defendant shall not examine any witness concerning the same matter. *Vide Practical Register in Chancery* 33, 4.

These depositions shall not be allowed in evidence, but only against the defendant who had notice, his heirs or assigns. *Vide Practical Register in Chancery* 33.

Or, against one who claims an interest under the defendant since the bill exhibited *Vide Practical Register in Chancery* 36, 7.



A Bill of Revivor.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth, &c. your suppliant B. A. of, &c. that whereas your suppliant on or about &c. did exhibit his bill of complaint into this high and honorable court, against D. C. of, &c. thereby setting forth, that the said D. C. &c. [*reciting the original bill*] and that your suppliant might be relieved in the premises, he prayed the aid and assistance of this honorable court; and that for that purpose process of subpoena might be awarded against the said D. C. to appear in this court, and answer the said bill; which process being granted, and the defendant therewith served, he appeared accordingly, and answered the said bill; to which answer your suppliant replied, and the defendant rejoined, and both parties joined in suing out a commission, and a joint commission issued for the examination of witnesses, by virtue whereof divers witnesses were examined on both sides, and their depositions duly taken, returned and published according to the usual rules and practices of the court, as by the said bill, answer; replication, &c. now remaining in this court may appear; and the cause so standing in this court upon the said proceedings as aforesaid, the eighth day of May now last past, was by the order of this honorable court, appointed for the hearing hereof. **BUT NOW SO IT IS**, may it please your lordship, that before any further proceedings were had in the cause, the said D. C. defendant in the cause died, whereby the said suit and proceedings thereupon became abated; and the said D. C. having in his life time made his will, and one E. F. of, &c. executor thereof, who since the said D. C.'s death, hath proved the said will, and taken upon himself the burthen of the execution thereof, and possessed himself of the said D. C.'s personal estate,

estate, sufficient to satisfy your suppliant's demands, &c. and forasmuch as by the death of the said D. C. the said suit is become abated as aforesaid. AND TO THE END, the same suit and all orders and proceedings therein may stand and be revived against the said E. F. and be put into the same state and condition as the same were in at the time they so became abated; may it please your lordship, the premises considered, to grant unto your suppliant his majesty's most gracious writ of subpœna to revive, issuing out of this honorable court, to be directed to the said E. F. therein and thereby requiring him personally to be and appear before your lordship in this honorable court, then and there to shew cause, if he can, why the said suit, orders and proceedings so abated as aforesaid, should not stand and be revived and put into the same condition as the same were in at the time of the abatement thereof, and answer all and singular the premises aforesaid; and also stand to and abide such further order and decree therein as to your lordship shall seem meet, &c.

Readings and Observations on Bills of Revivor.

IF the plaintiff or defendant die, his heir or executor, &c. shall have a bill of revivor against the defendant, his heir or executor, who has his interest. *Vide Practical Register in Chancery* 44.

If husband and wife are defendants, and the husband die, the plaintiff shall have a bill of revivor. *Vide Practical Register in Chancery* 46.

If a woman be plaintiff, and after an answer to her bill, she marries; the husband and wife ought to have a bill of revivor. *Vide Practical Register in Chancery* 47.

If two executors are plaintiffs, and one dies, there shall be a bill of revivor. *Vide Ca. Ch.* 77,

Or,

Or, if one of them marries, where her authority ceased by the will upon the marriage, if that does not appear by the bill. *Ca. Ch. 77.*

If part of the decretal order is omitted in the decree signed and enrolled, the plaintiff may revive the suit by bill of revivor. *R. on Demurrer, Ca. Ch. 37.*

So a defendant may have a bill of revivor as well as a plaintiff. *Abr. Ca. 2.*

[A defendant cannot revive, except only when there is a decree to account. *Anon. H. 1748. 3 Atkyns 691.*]

But if the bill be by husband and wife, and after answer he dies, the wife shall revive, or not, at her election. *Vide Practical Register in Chancery 47.*

[If bill is brought by husband and wife for a demand in her right, and he dies, the cause does not abate. *Anon. H. 1750. 3 Atkyns 726.*]

If there be a bill of interpleader, and, after a trial directed between the defendants, the plaintiff dies, a bill of revivor is not necessary; for the bill is at an end as to the plaintiff, and the defendants may proceed; for each of them is in the nature of a plaintiff. *1 Ver. 351.*

If there be a bill against trustees and the *Cestuy que Trust* in fee, to have a conveyance to the plaintiff for life, and afterwards to his issue in tail, and the *Cestuy que Trust* dies after a decree for the conveyance, the trustees may convey without a bill of revivor; for the death of one plaintiff or defendant abates the suit only as to himself, and a revivor is not necessary, where nothing is to be done by the representatives of him who is dead. *Abr. Ca. 2.*

[Tho' by *Stat. 8 W. 3.* a suit shall not abate by the death of one defendant, yet it must be taken with this restriction, that the subject matter of the bill is not hurt by such defendant's death. *Brown v. Higden, H. 1736. 1 Atkyns 291.*]

So, if a bill be against a *feme sole*, who, after answer, marries, there is no need of a bill of revivor; for the husband shall be concluded by her answer. *Vide Practical Register in Chancery 46, 7.*

So, if there be a bill by a *feme sole*, and, before answer, she marries, it is not necessary. *Vide Practical Register in Chancery 48.*

If joint-tenants, joint-obligees, obligors, or executors sue, and one of them dies after answer, there is no need of a bill of revivor for the survivor; because the interest survives. *Vide Practical Register in Chancery 47.*

If two plaintiffs, and one dies after bill filed and subpoena served but not returned, and the other without reviving takes out attachment, and defendant (it being in vacation) answers; the answer shall not be taken off the file, nor a bill of revivor brought; for if the suit is abated, defendant will have the benefit of it at the hearing. *Lasco v. Moys*, H. 1723. *Bunb.* 144.

So, if an administrator, as guardian to an infant executor, sues, and *pendente lite*, the infant comes of full age, it is not necessary. *Vide Practical Register in Chancery* 48.

An assignee, or a purchaser shall not have a bill of revivor for want of privity. *Semb.* 1 *Ver.* 283. 427. *Abr. Ca.* 3.

No one shall be made party to a bill of revivor, who is not in privity. *Ca. Ch.* 151. *Vide in Marg.*

A devisee shall not have a bill of revivor; for he does not represent the testator, but is in nature of a purchaser. *Ca. Ch.* 174.

If the plaintiff dies after a decree before costs taxed, no bill of revivor lies for the costs. *R. upon a Plea*, 2 *Ca. Ch.* 7.

[A bill of revivor may be brought for duty and costs not taxed in defendant's life-time, but not for costs alone. *Dodson v. Oliver*, H. 1723. *Bunb.* 160.]

But notice to one in the remainder, of a bill of revivor, was proper, altho' it was not necessary to make him a party, not being in privity. *Ca. Ch.* 151. *Vide in Marg.*

A creditor, allowed by order to prove his debt, may revive, tho' he was not a plaintiff originally. *Abr. Ca.* 3.

[If defendant by answer only, (not by plea or demurrer) insists plaintiff is not entitled to revive, yet the court on motion, will order the proceedings to stand revived; but if plaintiff does not shew he has a good title to revive, he will take nothing by his suit at the hearing. *Harris v. Pollard*, H. 1734. 3 *P. W.* 348.]

A bill of revivor pursues the first bill; for if there be a variance, it will be dismissed. *Vide Practical Register in Chancery* 45.

He who revives, after revivor stands in the same condition as his predecessor.

If a bill of revivor revives more than it ought, it will be bad. *R. upon Demurrer*, *Ca. Ch.* 77.

If it revive the whole decree, which was to pay money and to convey land, it may stand as to the personality, if the executor only revives, and not as to the reality; tho' the demurrer be general to the whole. *Abr. Ca.* 4.

But

But any plaintiff may be omitted in a bill of revivor, who was plaintiff to the former bill. *D. 2 Ca. Ch. 80.*

And, if the bill of revivor alledges a release, by the plaintiff omitted, to the other plaintiffs, and prays an answer, it is no material variance. *R. 2 Ca. Ch. 80.*

So a defendant who hath not put in his answer, may be omitted. *1 Ver. 308.*

So if one plaintiff refuses to join in revivor, the other shall revive against him and the other defendants. *Abr. Ca. 2.*

If husband and wife are defendants, and after answer the husband dies, she shall answer *de novo* to the bill of revivor, or her first answer shall stand, at her election. *Vide Practical Register in Chancery 46.*

If an answer to a bill of revivor, of part of an order omitted in the enrollment of the decree, draws into re-examination matters formerly settled, an order shall be made, that such matters be not re-examined. *Ca. Ch. 56.*

A bill of revivor is not allowed after thirty years. *2 Ca. Ch. 216.*

And a plaintiff upon an abatement of the suit may have a bill of revivor, or an original bill, at his election. *1 Ver. 463.*

If a defendant, served with process upon a bill of revivor in the Exchequer, does not answer, nor pay a commission within eight days, the proceedings shall be revived upon motion. *Rules and Orders in the Exchequer 17. Rule 43.*

[If assignees of a bankrupt bring a bill, and obtain a decree *nisi* against defendants who make default, and then new assignees are chosen, who bring supplemental bill in the nature of a bill of revivor, they shall stand in the place of the former, and may serve defaulters with subpœna to shew cause. *Brown v. Martin, P. 1745. 3 Atkyns 218.*]

If a decree is signed and enrolled, upon a subpœna scire facias it may be revived without appearance. *Semb. Wharam v. Broughton, M. 1748. 1 Vezey 180.*

[If a suit has abated, the court by consent of parties, may order money to be paid out of court without revivor, or may declare that a party is entitled to so much. *Beard v. earl Powis, T. 1751. 2 Vezey 399.*]

Bill of Review.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth unto your lordship, your suppliants K. L. of, &c. and M. N. of, &c. that &c. [*setting forth the former bill as in the decretal order;*] and thereupon the defendants answered, and the complainant replied, and witnesses were examined, and their depositions published, &c. that the cause came on to hearing, and was heard and decreed by the lord chancellor F. after which, &c. petitioned for a rehearing to the lord chancellor, &c. and the cause was accordingly reheard, and a decree for a reversal was made by his lordship; (*prout* the decree) and that decree is signed and enrolled in this court; but your suppliants do aver and say, that they are aggrieved by the said last decree, and that they ought not to be bound thereby, nor should any such decree have been made or pronounced against your suppliants; neither ought your suppliants to pay, &c. as by the said decree is appointed; and that the same decree is erroneous, and ought to be reversed; and for error do, according to the course of this honorable court, assign the errors therein as followeth. First, your suppliants say, and hope to maintain, that, &c. which is altogether uncertain, &c. Secondly, that, &c. which appears by, &c. to be fraudulent and corrupt. Thirdly, that &c. was not alive at the time of the said decree made in the said cause against your suppliants, and so could not be bound by the said decree; and consequently your suppliants ought not to be bound thereby; for all which said errors and imperfections in the said decree your suppliants have brought this their said bill of review; and humbly conceive they should be relieved therein; *in tender consideration whereof*, and for that there are divers other errors and imperfections in the said decree and proceedings, by reason whereof

whereof the same ought to be reviewed and reversed ; and that the first decree made by, &c. ought to stand and be confirmed, &c. TO THE END THEREFORE, that the said last decree, and all the proceedings thereupon, may be reviewed and reversed, added, &c. and that the said, &c. may answer the premises ; and that your suppliants may be relieved in all and singular the premises, according to equity and good conscience, &c. May it please your lordship to grant unto your suppliants his majesty's most gracious writ of subpœna to revive and answer, directed to, &c. commanding them, &c.

Readings and Observations on Bills of Review.

AFTER the dismissal of a bill, upon a full hearing, and this dismissal signed and enrolled, the cause shall not be retained, but by bill of review for special cause. *Vide Practical Register in Chancery* 51.

Nor shall the decree be reversed or altered, but upon a bill of review, unless it be for a miscasting. *Ibid.*

[If the decree is enrolled, there cannot be a rehearing, nor relief on an original bill, and the only remedy is by bill of review, which must be either for error on the face of the decree, or for new matter discovered since. *Taylor v. Sharp, T. 1735. 3 P.W. 371.*]

[If the decree is not signed and enrolled, a bill in the nature of a bill of review may be brought, it being fruitless to make a man sign and enroll a decree against himself, to entitle him to bring a bill of review. *Standish v. Radley, P. 1741. 2 Atkins 177. Lewellin v. Macworth, T. 1740. 2 Atkins 40.*]

[There must be probable cause made, that the new matter will be relevant ; as if after a decree in favor of parties claiming under a settlement, deeds are discovered which make it possible that the maker of it had not power to

to make it. *E. Portsmouth v. E. Effingham*, P. 1750. 1 *Ver.* 430. *Bennet v. Lee*, H. 1742. 2 *Atkyns* 529.]

[If supplemental bill is brought for new matter discovered; if there is none, defendant must avail himself of it by plea or demurrer, but cannot at hearing. *Lewellin v. Macworth*, T. 1740. 2 *Atkyns* 40.]

[On a supplemental bill in nature of a bill of review, there must be a petition to rehear or appeal. *Moore v. Moore*, T. 1755. 2 *Vezev* 596.]

But for cause apparent in the decree it may be reviewed; as, if land *in capite* be all devised for payment of debts; and so decreed, where by statute it is void for a third part. *R. 1 Rol.* 382. l. 10.

So, if the decree be founded upon a mistake of the law; for a review is in nature of a writ of error. *R. 1 Rol.* 382. l. 10.

Or, upon a mistake in conscience, upon the proof before the chancellor; and that is the usual course. 1 *Rol.* 282. l. 35.

Or, for defect in the words of the decree. 2 *Ca. Ch.* 162.

Or, for want of jurisdiction in the court. 1 *Ver.* 202.

And there may be a review of a decree for the plaintiff for less than was due, as well as upon a dismissal, or a decree against him. *Ca. Ch.* 53.

No review shall be allowed, but for error apparent in the decree. *Ca. Ch.* 54.

Or, upon affidavit of new matter arising since the decree made; for neglecting to have evidence, which was known to the party, at the time of the decree, is not cause for a review. *Ca. Ch.* 43. 1 *Ver.* 166. *Eq. Ca.* 184.

[But the discovery of new matter, in being at the time of the decree, but not known till after, entitles to a review. *Standish v. Radley*, P. 1741. 2 *Atkyns* 177.]

Nor the confession of the party since the decree. *Ca. Ch.* 43.

Nor the misreciting of a fact or proof by the decree; for that is a record, and if the decree be pursuant to the fact there recited, a review shall not be allowed. *R. Ca. Ch.* 54.

Nor till a recognizance given to the master, for payment of the costs and damages. *Vide Practical Register in Chan.* 51.

[No supplemental or new bill in nature of a bill of review, grounded on new matter since the decree, shall be exhibited without leave of the court, and depositing 50*l.* to answer costs and damages. *General Order*, 17 *Oct.* 1741. 1 *Atkyns* 139.]

Nor

Nor in the Exchequer till costs paid, and a recognizance to perform the former decree, and to pay the further costs; otherwise there need be no answer to it. *Rules and Orders in Exchequer* 13. *Rule* 33.

Nor in Chancery till he has obeyed the first decree; as, if he have paid the money, delivered writings, or the possession of land decreed; yet the court has dispensed with this rule upon good security given for the payment of the money, &c. 14 *Car.* 2. *Car. Ch.* 42. 1 *Ver.* 117.

But if the decree be for the extinguishment of a right, conveyance of land, release of a debt, canceling of writings, &c. performance may be deferred by order of court, till the hearing of the cause upon the bill of review. *Vide Practical Register in Chancery* 52.

So, upon an affidavit that the plaintiff is not able to pay, and the defendant has land in execution for costs. 1 *Ver.* 264.

No time is limited for a review, but after long acquiescence the error ought to be apparent. 1 *Ver.* 287, 293.

[The court is very tender of permitting a bill of review after a long time, and will not do it unless the petitioners bring themselves very clearly within lord Bacon's rules. *Norris v. Lencove*, *H.* 1743. 3 *Atkyns* 26.]

[The court will not grant a bill of review, when an account was directed and taken on a foreclosure bill, and the report confirmed some years before; and it appears that the defendant's agent, attorney and solicitor, attended the master for him. *Gould v. Tancred*, *H.* 1742. 2 *Atkyns* 553.]

Upon a review, no witness shall be examined to a matter, upon which an examination might have been upon the first bill. *Vide Practical Register in Chancery* 53. *Vide supra.*

[On arguing a demurrer to a bill of review, nothing can be read but what appears on the face of the decree; but after demurrer over-ruled, plaintiff may read bill, answer, or any evidence, as at a re-hearing. *Catterall v. Purchase*, *T.* 1738. 1 *Atkyns* 290.]

[Papers in the hands of one of the parties before, but not discovered till after the decree, may be read on a bill of review. *Standish v. Radley*. *P.* 1741. 2 *Atkyns* 177.]

[If a party in the first cause has examined to establish a particular point, the court will not suffer him to bring a new bill, to contradict what he attempted to prove in the first; as, first to prove a man sane, and then to prove him insane. *Bennet v. Lee*, *H.* 1742. 2 *Atkyns* 529.]

It

It is not cause for a review, that the suit was abated by the death of the defendant before the decree. *R. Ca. Ch. 122.*

Or, that a fact is false; for there can be no new examination after publication. *R. 1 Rol. 382, l. 30. Ch. R. 37.*

Or, that there was a verdict, and a sentence in the ecclesiastical court afterwards to the contrary. *1 Ch. R. 25.*

No review shall be allowed for him who is not privy to the first decree; nor for a devisee of the plaintiff in the first bill. *Ca. Ch. 123.*

But where four defend for all the inhabitants of such a place; another inhabitant, not party or privy to any of the four defendants, shall have a review. *Ca. Ch. 272.*

Nor shall a review be allowed against him who is no party or privy.

Nor for him who has released his equity before the decree. *Semb. Ca. Ch. 107.*

No review shall be admitted after a bill of review; for that would be infinite. *R. 2 Ca. Ch. 133. 1 Ver. 135, 441.*

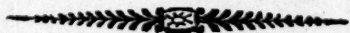
Tho' the first bill was dismissed without answer, &c. *R. 2 Ca. Ch. 133.*

Or, there be an apparent error. *1 Ver. 417. Vide 2 Ca. Ch. 133.*

But a bill of review may be by one defendant only, who is *pars gravata*. *R. Hard. 50.*

So where the plaintiff has no estate or title but in equity. *Hard. 50.*

So, if trustees have obtained decrees, and afterwards are changed, the new as well as the old trustees may be parties to a review. *Hard. 104.*



A Bill of Interpleader.

To the Rt. Hon. John, Earl of Clare, Lord High
Chancellor of Ireland..

HUMBLY complaining, sheweth unto your lordship, your suppliant B. A. of &c. that D. C. late of the city of London, being possessed of a messuage or tenement with the appurtenances situate, lying and being at K. within the manor of L. in the county of N. called the New Inn, and also of two closes of arable land called M. situate, lying and being within the said manor, for the remainder of one or more long term or terms of years, determinable on the lives of him the said D. C. T. C. his son, and K. A. widow, his daughter, and the survivor and survivors of them, which said messuage or tenement, lands and premises, had been granted, and which he so held by and under two several leases thereof respectively, made and executed to him by W. T. of, &c. esq; then lord of the said manor, at and under the yearly rents and covenants therein respectively contained, he the said D. C. did sometime in the year 1787, duly make and publish his last will and testament in writing, and thereby give and devise all the said premises to the said T. C. his son, for so long of the said terms as he should live, and after his death he gave the same to P. the wife of the said T. C. for so long of the said terms as she should live, and after her death willed and devised, that the executors of the said T. C. should hold and enjoy the said premises for all the rest, residue and remainder of the said two terms then to come and unexpired, and of his said will made the said T. C. his executor; and soon after the making his said will, he the said D. C. departed this life; whereupon the said T. C. entered upon the said premises, and held and enjoyed the same under the said will; and he the said T. C. did, soon after his said father's death, prove the said will in the ecclesiastical

fiaſtical court of this kingdom, as in and by the ſaid will, or the probate thereof under the ſeal of the ſaid court, relation being thereunto had, will appear. And your ſuppliant further ſheweth unto your lordſhip, that the ſaid T. C. being poſſeſſed of the ſaid premiſes, as deviſee under the ſaid will, as aforeſaid, or as executor of the ſaid will, he and the ſaid P. his wife, did ſometime in or about the year of our Lord, 1789, make ſome mortgage of the ſaid meſſuage or tenement called the New Inn to M. J. late of, &c. ſince deceased, for ſecuring the repayment of the principal ſum of 1000*l.* with intereſt for the ſame; and at or about the ſame time, or ſhortly afterwards, they the ſaid T. C. and P. his wife, did make ſome mortgage of the ſaid two cloſes called M. to G. H. of the ſaid city of London, merchant, for ſecuring the repayments of the principal ſum of nine hundred pounds, with intereſt for the ſame, as in and by the ſaid mortgage deeds, had your ſuppliant the ſame to produce, relation being thereunto reſpectively had, would more fully appear. And your ſuppliant further ſheweth unto your lordſhip, that afterwards the ſaid principal and intereſt ſecured by the ſaid mortgage to the ſaid G. H. not being paid according to the proviſo or condition for payment thereof in the ſaid mortgage to him made contained, and the eſtate in law of and in the ſaid two cloſes, being become abſolute in law in him the ſaid G. H. and there being nine hundred and ſeventy eight pounds ſeven ſhillings and ſix pence remaining due to him for principal and intereſt on the ſaid mortgage, he the ſaid G. H. did, by ſome indenture by him duly executed, for the conſiderations therein mentioned, aſſign the ſaid two cloſes, and all his eſtate, right, title and intereſt therein to B. R. of London aforeſaid, ſubject to redemption on payment of the principal ſum of nine hundred and ſeventy pounds, ſeven ſhillings and ſix pence, with intereſt for the ſame by the ſaid T. C. at the time and in the manner in the ſaid deed of aſſignment mentioned, as in and by the ſaid deed of aſſignment, had your ſuppliant the ſame to produce, relation being thereunto had, would more fully appear. And the ſaid T. C. at or about the ſame time delivered him the ſaid B. R. the poſſeſſion of the ſaid two cloſes, and he hath ever ſince been in the receipt of the rents thereof; and your ſuppliant further ſheweth unto your lordſhip, that the ſaid M. J. ſometime ſince departed this life, having in his life-time duly made and
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published his last will and testament in writing, and thereof nominated and appointed M. E. spinster, his only child, executrix, who hath since his death duly proved his said will in the proper ecclesiastical court, as in and by the probate thereof, under the seal of the said court, relation being thereunto had, will appear; and your suppliant sheweth unto your lordship, that the estate in law of the said M. E. of and in the said messuage or tenement called the New Inn, being absolute in her as executrix aforesaid, and there being a large sum of money due upon the said mortgage thereof, for principal and interest, she the said M. E. did, by some indenture or deed of assignment, for the considerations therein mentioned, some time in or about the month of March last, assign the said messuage or tenement with the appurtenances, and all her estate, right, title or interest therein to the said B. R. as in and by the said last mentioned deed or indenture of assignment, had your suppliant the same to produce, relation being thereunto had, would appear. And your suppliant further sheweth unto your lordship, that the said B. R. being possessed of and entitled to the said two closes of land, by virtue of and under the said assignment thereof, did some time in or about the month of October last, demise the same to your suppliant by parol or word of mouth only, for the term of three years from Lady-day now last past, at the yearly rent of fifty pounds, payable quarterly, which is the full yearly value thereof; and the said M. E. shortly before she assigned the said messuage or tenement to the said B. R. as aforesaid, had in like manner demised the same to your suppliant by parol or word of mouth only, for three years from Lady-day now last past, at the yearly rent of fifty pounds, payable quarterly, which is the full value thereof. And your suppliant sheweth unto your lordship, that the said T. C. having got into the possession of all the premises, the said B. R. hath caused an action of trespass and ejectment to be brought in his majesty's court of Common Bench for recovery of the possession thereof, and hath caused a declaration in ejectment to be delivered to and served upon your suppliant, but at the same time told your suppliant, that he would not disturb your suppliant in his possession as tenant thereof as aforesaid, and that he only intended to recover the same against the said T. C. and your suppliant, having given notice of and delivered over the said declaration to the said T. C. he alledged to your suppliant, that

he had paid off and satisfied the said B. R. all monies due on the said two mortgages, and told your suppliant he need not give himself any trouble about it, declaring that he the said T. C. would defend the said suit, and the possession of the said premises. And your suppliant sheweth unto your lordship, that being a year's rent, became due from your suppliant for the said premises; and they the said B. R. and T. C. have both of them demanded the same of and from your suppliant, and do each of them insist to be paid the same; and your suppliant sheweth unto your lordship, that your suppliant confiding in such the declarations of them the said B. R. and T. C. with respect to the said ejectment, did not make any defence thereto, but by collusion between them the said B. R. and T. C. the said T. C. having caused himself or your suppliant to be made tenant in the room of the casual ejector, the said cause was by the said B. R. carried down in order to be tried at the last assizes held in and for S. in the county of D. and the jury being sworn, and the said T. C. or any on his or your suppliants behalf, not appearing to confess lease, entry and ouster, the complainant in the said ejectment was nonsuited, and the *posse* being returned, judgment hath been thereupon given against the casual ejector, and the said B. R. threatens that he will cause a writ of possession to be sued out upon the said judgment, and will turn your suppliant out of possession of the said premises, and will cause an action to be brought against your suppliant for the mesne profits thereof; and they both threaten to distrain your suppliant for the said rent, and otherwise to proceed against your suppliant at law for the same, so that your suppliant is not able to determine or judge to which of them the said rent of right belongs, or is payable, nor to which of them securely or with safety to pay the same; and they both declare and threaten they will turn your suppliant out of possession of the said premises, and not suffer your suppliant to hold or enjoy the same. ALL WHICH ACTINGS AND DOINGS of the said B. R. and T. C. (who combine and confederate together, and with divers other persons at present unknown to your suppliant, whose names, when discovered, your suppliant prays may be inserted herein, and they made parties, with apt words to charge them how to injure and oppress your suppliant in and touching the premises) are contrary to equity and good conscience, and tend to your suppliant's manifest wrong and oppression. *In tender consideration whereof*, and forasmuch as your suppliant is remediless

remediless in the premises by the rules of common law, and can only be relieved in a court of equity before your lordship, where matters of this nature are properly cognizable, and where your suppliant may compel the said claimants to interplead, settle, and adjust their rights and demands between themselves, so that your suppliant may be enabled to pay the said rent with safety; and for that your suppliant's witnesses, who could prove the truth of the several matters aforesaid, are dead, or gone into parts beyond the seas, remote, and to your suppliant unknown. **TO THE END THEREFORE**, that the said B. R. and T. C. and the rest of the confederates (when discovered) may upon their respective corporal oaths, full, true, and perfect answer make (according to the best of their knowledge, remembrance, information and belief,) to all and singular the matters aforesaid, as fully and effectually to all intents and purposes, as if the same were here repeated, and they particularly and distinctly interrogated; and more especially that they may set forth and discover whether the said D. C. was not in his life-time possessed of the said messuage or tenement, and two closes of land, for some and what term or terms of years determinable in manner aforesaid, or how otherwise; and whether he did not in his life-time duly make and publish his last will and testament in writing, and thereby give and devise the premises, or any, and what part thereof, to such persons, and in such manner as aforesaid, or how otherwise; and whether the said T. C. and R. his wife, or either and which of them, did not become possessed of or intitled under the said will, or how otherwise, to the said premises, or any and what part thereof; and whether the said T. C. and R. his wife, or the said T. C. alone, did not make some, and what mortgage of the said messuage or tenement, called the New Inn, to the said M. J. and whether the estate at law of the said M. J. or of the said M. E. therein did not become absolute; and whether he the said M. J. is not dead, and where he died; and whether he did not in his life-time make the said M. E. his only child, executrix thereof; and whether she as executrix as aforesaid, did not become possessed of or intitled to the same; and whether she did not make such assignment thereof as aforesaid, or any other and what assignment, and when, to the said B. R. or how otherwise he the said B. R. became possessed of or intitled to the same; and whether as they know, have heard, or do believe, the said M. E. before the making the said assignment, did not devise
the

the said messuage or tenement to your suppliant by parol or word of mouth, or how otherwise, for such term of three years from lady-day last, or for what other term, at such yearly rent as aforesaid, payable as aforesaid, or what other rent, and how payable; and whether they the said T. C. and P. his wife, or the said T. C. alone, did not make some, and what mortgage of the said two closes to the said G. H. and whether the estate of the said G. H. therein did not become absolute at law; and whether the said G. H. did not afterwards, and when, make some and what assignment thereof to the said B. R. and whether the said B. R. did not, and when, demise the said two closes to your suppliant by parol or word of mouth, or how otherwise, for such term of three years from lady-day last, or for what other term, at such yearly rent as aforesaid, payable as aforesaid, or what other rent, and how payable; and whether the said B. R. hath not caused a declaration of ejectment to be delivered, and when, to your suppliant; and whether he did not make and give your suppliant such assurance concerning the same as aforesaid, or what else he said, intimated, or signified to your suppliant concerning the same, and whether he the said T. C. did not cause himself to be made defendant in the said action, in the room of the casual ejector, and whether he did not undertake or promise to defend the same, and whether he any ways and how, did defend the same, and whether the complainant in the said ejectment was nonsuited at the said last assizes, on account of said T. C.'s not appearing to confess lease, entry and ouster, and how otherwise; and whether thereupon judgment hath not been had, or is not intended to be had against the casual ejector; and whether he the said B. R. hath not threatened or declared, that he would cause a writ of possession to be sued out upon the said judgment, or doth not intend so to do; and whether they the said B. R. and T. C. have not threatened to turn your suppliant out of possession of the said premises, or any and what part thereof; and whether there is not now due for rent of the said premises, the sum of or any other, and what sum; and whether they do not both demand the said rent, or threaten to distrain, or sue your suppliant for the same, or which of them so doth, and that they may set forth to which of them the said rent doth of right belong, or is payable, and may interplead, settle, and adjudge their said demands between themselves; your suppliant being willing to pay the said rent to either of them, to whom the
same

same shall appear of right to belong, being indemnified; that your suppliant may be at liberty to bring the same into this honorable court, which your suppliant doth hereby offer to do for the benefit of such of the said two parties who shall appear to be entitled thereto; and that they the said B. R. and T. C. and each of them, may be restrained by the injunction of this honorable court from proceeding at law against your suppliant for the said rent, and also from proceeding in the said ejectment, or any other ejectment for recovery of the said premises or any part thereof, during the remainder of the said three years, for which the said premises were severally demised to your suppliant as aforesaid, and that your suppliant may be quieted in the possession of all and singular the said premises during such the remainder of the said term of three years; and that your suppliant may have such farther and other relief in and touching all and singular the matters and things aforesaid, as to your lordship shall seem meet, and agreeable to equity and good conscience. May it please your lordship, &c.

Readings and Observations on Bills of Interpleader.

IF an action is against a tenant by two persons, who claim his rent; he may exhibit his bill of interpleader, and bring his rent into court, and, after the contest determined, between the defendants, have his costs, if he is in no default. *Vide Practical Register in Chancery* 38, 9.

So, if A. receives money for B. if upon an account between him and C. so much appears to be due to him, and if it is not due, to return it to C. and both sue A. he by bill of interpleader may bring the money into court, and thereupon he shall have an injunction; and after an account between B. and C. he shall have costs from him, who had no cause of suit. *R. Ch. R.* 257, 8.

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[An executor cannot bring a bill of interpleader till he has proved the testator's will. *Mitchell v. Smart*, H. 1747. 3 *Atkyns* 606.]

[To a bill of interpleader against attorney-general and others, there must be an affidavit annexed. *Errington v. attorney-general et al'*. P. 1731. *Bunb.* 303.]

[The affidavit to bill of interpleader need not swear it is at plaintiffs own expence, only that there is no collusion with any of the defendants. *Metcalf v. Hervey*, T. 1749. 1 *Vezey* 248.]

[Interpleader must shew that there is such person *in rerum natura* as can interplead. *Ibid.*]

[But if a guardian sets up a title to himself, and conceals an infant who is suggested to have right to controvert that title, bill may be brought to compel the guardian to produce him. *Ibid.*]



Certiorari Bill.

To the Rt. Hon. John, Lord Visc. Fitzgibbon, Lord
High Chancellor of Ireland.

HUMBLY complaining, sheweth, &c. your suppliant W. W. &c. that whereas, &c. [*setting forth a cause prosecuted in the Lord Mayor's court*] All which said premises your suppliant hopes he shall make fully appear by several witnesses if need be, which he could not produce within the said city of Dublin, before the said lord mayor and his brethren the aldermen of the said city of Dublin: Your suppliant sheweth unto your lordship, that one W. G. a material witness for your said suppliant concerning the said premises, at the time of the cause, &c. then lived and resided, and still liveth and resideth at Drogheda, without the jurisdiction of the said lord mayor, and his brethren the aldermen of the city of Dublin, whereby your suppliant had no remedy to compel the said W. G. to be examined, or to give his testimony in the said cause in the city of Dublin concerning the premises. *In tender consideration whereof,* and forasmuch as for want of jurisdiction in the said lord mayor and his brethren the aldermen of the city of Dublin over your suppliant's witnesses, your suppliant is remediless there; and it being agreeable with the rules and practice of this honorable court, upon such necessities and defects of jurisdiction in inferior courts, for this high and honorable court to remove the records and proceedings thereof into this honorable court, and to proceed in this court upon the same, and all other matters and things incident thereto, or whereupon your suppliant seeks relief. May it please your lordship therefore, not only to grant unto your suppliant a writ of *Certiorari* to be directed to the said lord mayor of the city of Dublin, and his brethren the aldermen of the said city, thereby commanding them upon the receipt of the said writ, to certify and remove the records of the said cause, &c. and all proceedings thereupon, into this

this honorable court: But also to grant unto your suppliant his majesty's most gracious writ of *subpœna* to be directed to the said S. H. &c. thereby commanding them and every of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in the high and honorable court of Chancery, then and there upon their corporal oaths fully and directly to answer all and singular the premises, and to set forth and discover whether, &c. and whether it was not declared and agreed, &c. and whether the said S. H. &c. be not indebted unto your said suppliant, and in what sum, and that your said suppliant may be righted and relieved in the said premises according to equity and good conscience: And that the said defendants may stand to, observe and perform such order and decree therein, as your lordship in your great wisdom shall think just and meet.

Readings and Observations on Certiorari Bills.

IF there is an action in an inferior court, in which the defendant cannot have right done him, because his witnesses live out of the jurisdiction, or for any other cause; the defendant may exhibit his bill in equity in the nature of a certiorari to remove his cause into Chancery. 2 Ver. 491. Ch. R. 203. Eq. Abr. 80.

And thereupon the plaintiff in the inferior court shall be put to answer, and the plaintiff in equity may proceed to the hearing of the cause. Ca. Ch. 31.

And the plaintiff may insert other matter in the certiorari bill, and then there shall be no *procedendo*. Eq. Abr. 80.

So, tho' a suit is in a county palatine, a certiorari bill lies. 1 Ver. 178.

So, after a *procedendo* upon a certiorari bill and a decree in the inferior court, the party shall have a bill here to enforce or remedy it. Ch. R. 224.

The

The plaintiff in a certiorari bill ought to give security by bond to prove his suggestion, within and if the master does not certify the suggestion proved, a *procedendo* goes. 2 *Ver.* 492. *Vide Ante*, (D. 9.)

If the suggestion is proved, the defendant answers, witnesses are examined, publication passes, and a subpoena *ad aud. judicium* goes. 2 *Ver.* 492.

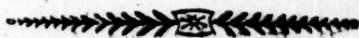
And upon the hearing, the court may determine, or award a *procedendo*. 2 *Ver.* 492. *Ch. R.* 224.

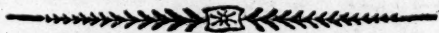
So, a *procedendo* may go after publication, before a subpoena *ad aud. judicium*. 2 *Ver.* 492.

So, after a subpoena *ad aud. judicium*. *Eq. Abr.* 81.

So, the court may grant a *procedendo*, or hear the cause, at discretion. *Eq. Abr.* 81.

But after a decree to account in the Exchequer of Chester, &c. or other county palatine, the defendant shall not have a certiorari bill, upon a pretence that his witnesses and deeds are out of that jurisdiction. *R. Ch. R.* 452, upon a plea of such a decree.



A BILL in the *Exchequer* for TITHES.

To the Rt. Hon. and Hon. the Chancellor, Treasurer,
Lord Chief Baron, and the rest of the Barons of
his Majesty's Court of Exchequer in Ireland.

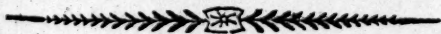
HUMBLY complaining, sheweth unto your lordship,
your suppliant B. A. rector of the parish and parish-
church of E. in the county of Monaghan, debtor and
accountant to their majesties, as by the records of this
honorable court may appear; that about six years since,
that is to say, on or about the month of April, in the
year of our Lord God, one thousand seven hundred and
eighty six, your suppliant was lawfully instituted and
inducted into the rectory of the said parish and parish-
church of E. and that your suppliant hath ever since been
and remained rector of the same, and hath carefully
and diligently officiated and performed, and still doth
officiate and perform the cure therein in all points, as
by the laws of this realm and the duty of his function,
hath been and is required, in regard whereof, and by
force of the said institution and induction, your suppliant
became and is justly, rightfully and lawfully entituled
unto, and ought to have and receive all the tithes, as
well great as small offerings and duties whatsoever arising,
renewing or growing, or which since his institution and
induction, have arisen, been renewed or grown within
the said parish, as belonging to the rectory thereof, and
also every sum and sums of money, thing and things
whatsoever, which during the said time hath by any custom
or modus within the said parish been payable to your
suppliant as rector of the same, and as to any former
rector or rectors of the said parish or parish-church have
heretofore been answered or paid the same. And your
suppliant further sheweth, that G. the elder, of L. in the
said county of M. gentleman, hath, holdeth and occupi-
eth,

eth, and for several years last past, that is to say, from Michaelmas day, which was in the year of our Lord, one thousand seven hundred and eighty seven, unto this present time, hath had, held and occupied several lands, closes, pastures, meadows, orchards, gardens and yards, lying and being within the said parish and tithable places of E. for which he the said G. ought to have paid, and ought to pay unto your suppliant tithes in kind yearly and every year, during all the said term, amounting unto the yearly value of six pounds, and upwards; and particularly the said G. during all the time aforesaid, hath had, occupied and enjoyed one close called the stack-close, lying in the said parish and tithable places of E. aforesaid, containing by estimation four acres and upwards, being of the yearly value of five pounds, or thereabouts, during which time the said G. did either make several loads of hay yearly, of the grass in that said time yearly growing and renewing upon the same, to a very great value, the tithe or tenth part whereof, had the same been duly and truly answered unto your suppliant, as the same ought to have been, could not be yearly less than ten shillings per annum, or thereabouts, or the said G. did otherwise feed the same with several cattle, for which your suppliant ought to have been answered and paid two shillings per pound, according to the yearly value of the said close, or have been otherwise satisfied for the tithes thereof, during the said term; and further the said G. during all the said time, hath had, held and occupied within the said parish and tithable places of the same, several orchards, gardens and yards, in which not only grass, but apples, pears, and several other fruit and tithable things, have yearly grown and been renewed during the said term to a considerable value, the tithes whereof yearly payable unto your suppliant, during the time, amounted not unto less than ten shillings per annum yearly; and the said G. hath further had and kept within the said parish yearly, during the said term, divers sows which have had pigs, divers geese, turkeys, ducks, hens and other poultry which have laid eggs, the tithes whereof have been during that time yearly worth three or four shillings or more, and several other things, for which, or the product thereof, your suppliant ought yearly during the said term to have tithes in kind, or some consideration for the same. And your suppliant doth further shew, that the said G. during the time aforesaid

said, hath had, held and occupied several other lands and tenements within the said parish, for which time out of mind of man there is, or ought yearly to be paid unto the rector of the parish for the time being, one hen and two pence halfpenny in money, on the eve of the feast of the nativity of our Lord; for and in lieu of all tythes for the said lands and tenements, and in case the same be not duly then paid, then the sum of ten pence is to be paid for the same; or some such like custom called the *lorks*, hath been there time out of mind used for the said other lands and tenements. And your suppliant doth further shew, that the said G. from Michaelmas day, which was in the year of our Lord, one thousand seven hundred and eighty eight, unto the full end and term of one whole year thence next ensuing, did hold and occupy within the said parish certain other lands, meadows and pastures of the value of twenty pounds per annum, or upwards; the tythe hay and herbage thereof; had the same been duly answered to your suppliant, was yearly worth forty shillings and upwards to your suppliant. And your suppliant doth further shew, that the said G. during the time aforesaid, hath not paid or answered to your suppliant any tythes, offerings, customs, modus, or duties whatsoever, for or in lieu thereof, or of any the said premises; but doth refuse to do the same, and doth endeavour to conceal the same from your suppliant, and what lands he holdeth in the said parish, and what profits he hath yearly had or made of the same, and what quantity of grass or hay he hath had made or cut, or what cattle or sheep he hath had or fed on or upon the said premises respectively, during the said times respectively, and what fruit, eggs, poultry, fows, pigs or other things tythable, he hath for the said respective times aforesaid, had or kept upon any part of the said premises, and what tythes have been due and payable for the same unto your suppliant, during the said respective time and times. *In tender consideration whereof*, and for that your suppliant hath not any witness or witnesses whereby in a due course of law to prove the said premises, and what hath yearly grown, come or been renewed upon the said premises, or any part thereof, or what the said tythes due unto your said suppliant, did or might yearly amount unto, but the same remaineth solely in the knowledge of the said G. **TO THE INTENT THEREFORE**, that the said G. may upon his corporal oath, true and distinct answer make to all and singular the premises,

premises, as if the same were herein again particularly repeated and interrogated, and more especially may set forth what lands and tenements, meadows, pastures, orchards, gardens or yards he hath had, held, occupied or enjoyed within the said parish or tithable places of E. aforesaid, during the time aforesaid, and of what yearly value, and what quantities of grass or hay he hath, during the time aforesaid, or any part thereof, cut, or caused to be cut or carried away, and what was the value thereof, and what tithe was due for the same, or for the herbage or feeding of the said premises, or for any part thereof, or for any hens, eggs, poultry, fows, pigs, or other things whatsoever, had, kept, arising, renewing or growing upon the said premises, or any part thereof, or with offerings or any other dues, duties, or customs or modus, for and in lieu of tithes which had been at any time paid or ought to be paid for the same, or any part thereof, and when and where he hath paid the same; and that the said G. may pay and answer unto your suppliant all such tithes, customs, dues, duties and modus, as during the respective times and terms, or any part thereof are due and coming unto your suppliant, and may for the future continue paying the same, as the same shall grow due and payable; and that your suppliant may be relieved in all and singular the premises, according to equity and good conscience. May it please your lordships, the premises considered, to grant unto your suppliant, his majesty's most gracious writ of subpœna, to be directed to the said W. G. thereby commanding him at a certain day and under a certain pain therein to be limited, personally to be and appear before your lordships in this honorable court, then and there to answer all and singular the premises, and further to stand to and abide such order, direction and decree in the premises, as to your lordships shall seem meet; and your suppliant shall ever pray, &c.

Readings and Observations on Tithe Bills.



UPON a bill in the Exchequer by a parson against his parishioners for discovery and subtraction of tithes, the court decrees the single value, with costs and payment *in futuro*.

And this did not begin in the time of war; but was used *ab antiquo*. *Hard. 5; 116. Sav. 63. 38 Aff. pl. 20.*

And therefore, where the plaintiff demands the single value only, and makes proof of the quantity and value, the tithes shall be decreed. *R. Hard. 4, 5.*

So a bill in the Exchequer may be for tithes in London, upon the decree 37 *H. 8.* tho' by the *St. 37 H. 8. 12.* remedy is given before the mayor. *R. Hard. 116.*

And, as the king himself may sue without question, so his patentee may; for he has the same personal privilege. *Hard. 116.*

So a suit may be by bill in the Exchequer between an impropiator and vicar, for tithes, where the king is patron. *Lane 100. 1 Rol. 538. l. 45. Vide Courts, (D. 2.)*

So a bill may be for a discovery only without praying relief, (in order to sue for the treble value at common law) tho' he does not offer to take the single value only. *Semb. upon Demurrer, Hard. 190.*

[On a bill for tithes, defendant may move that the value be ascertained by the oath of the plaintiff; and on consent the court will order it, and without consent, will order plaintiff to shew cause why he should not consent. *Bally. v. Peasly, in Sc. T. 1718. Bunb. 26.*]

[If a bill is brought for tithes, glebe and common, the court will retain it till plaintiff makes out his title by an action to the two last. *Sweetapple v. D. of Kingston, T. 1727. Bunb. 238.*

A bill in the Exchequer ought to shew how, or by what title the plaintiff demands tithes. *Vide Hard. 130, 321.*

[Lay-impropiator, if he sets out a title under the crown, and derives it down, must prove it; but if he does not set out such title, it is enough if he proves that the tithes belonged

belonged to those under whom he claims. *Leigh v. Maudsley*, H. 1730. *Bunb.* 296.]

[A lay-impropriator need not prove payment of tithes to him, if defendant admits his general right, but claims exemption. *Benson v. Olive*, T. 1730. *Bunb.* 384.]

[Where there is a lay-impropriator, plaintiff must shew in whom the fee is vested, and derive his title from thence. *Penny v. Hoper*, T. 1722. *Bunb.* 115.]

[A vicar must shew his endowment of the tithes for depasturing barren cattle, or that they have been usually received by the vicar. *Ayde v. Flower*, T. 1716. in Sc. *Bunb.* 7.]

[If a layman claims as lessee of a dean and chapter, it is a sufficient setting forth of title. *Burwell v. Coates*, P. 1723. *Bunb.* 129.]

[Bill by the bishop and the sequestrator, during incapacity of mind of incumbent, is not good, unless the incumbent in person or by his committee, is a party. *Bp. of London v. Nichols*, M. 1723. *Bunb.* 141.]

[Bill laying a custom, or some such custom, is bad. *Beaver v. Spratley*, H. 1733. *Bunb.* 333.]

But if a vicar demands tithes, without saying how entitled, by prescription or endowment, it is well, where the defendant by his answer admits him to be vicar, and does not controvert his right, but insists upon a satisfaction given. *R. Hard.* 130. *Pye v. Rea*, in Sc. P. 1721. *Dunb.* 72.]

So, if the plaintiff shews that he is vicar, and entitled generally. *R. Hard.* 321, tho' it is there said, that such bill has been held insufficient upon demurrer.

[In bill by vicar for tithe herbage and furze, it is sufficient, if he shews that he was entitled to all small tithes, and one composition for the land in question. *Goole v. Jordan*, H. 1723. *Bunb.* 144.]

So, it is sufficient if the plaintiff shews that he is rector, and entitled to the tithes in the parish, without more.

[In equity they never hold the parson to the proof of his admission, institution, induction, and reading the articles. *Per totam curiam.* *Woodcock v. Smith*, in Sc. T. 1718. *Bunb.* 25.]

But if the plaintiff by his bill demands the treble value, his bill shall be dismissed. *R. 3 Leo.* 204.

So, if he does not make proof of the quantities and values of the tithes, where the defendant insists upon an extinguishment by unity of possession; for no damage to the plaintiff appears. *R. Hard.* [In

[In a bill for a portion of great and small tithes in another parish, the vicar of that parish must be a party. *Baily v. Worrall*, T. 1722. *Bunb.* 115.]

The defendant upon a bill for tithes may plead non-residence, &c. without shewing quantities and values. *R. Ca. Eq.* 228. *Vide Comyns's Rep.* 392, 3.

[If bill is brought for tithes by the lessee of the parson with cure of souls, defendant may plead the non-residence of the parson for 80 days before filing the bill, without setting forth the quantities, &c. for the lease is void. *Mills v. Etheridge*, H. 1725. *Quilter v. Lowndes*, *Quilter v. Masfenden*, P. 1726. *Bockenham v. Bentfield*, M. 1726. *Bunb.* 210.]

[*Sed. Q.* If rector and lessee join in the bill; for by non-residence before sentence, he only forfeits his lease and rent, not his tithes. *Atkinson v. Peasley*. *Ibid.*]

[If the plea does not shew that the non-residence was not after the time wherein the tithes were demanded, it is bad. *Anon. M.* 1726. *Ibid.*]

Or a modus if he shews quantities and values. *Ca. Eq.* 228.

[If defendant pleads payment of money in satisfaction, he must shew quantities and values. *Gumley v. Fontleroy*, in *Sc. P.* 1720. *Bunb.* 60.]

But the statutes of limitations is no plea. *Ca. Eq.* 229.

[For defendant is in the nature of a receiver for plaintiff. *Marston v. Cleypole*, P. 1726. *Bunb.* 213.]

[To a bill for tithes, setting forth a former bill in *Sc.* and a decree for these tithes; after issue to try modus, and a verdict for plaintiff, defendant may plead in bar a subsequent suit in Chancery, and issues directed and found for the modus, and decree to establish them. *Geale v. Wyntour*, H. 1725. *Bunb.* 211.]

The defendant by his answer, ought to answer all the material parts of the bill.

If he insists by his answer (and not by plea) upon a discharge by a modus, he ought to answer to quantities and values; and an examination upon interrogatories if the modus be proved, does not excuse from a full answer. *R. Hard.* 130. (*Vide Comyns's Rep.* 392.)

So, if he insists upon a modus by plea; for the plea does not go to the right of the plaintiff, but to avoid the account by the defendant. *Semb. Cont. Hard.* 130.

Yet it is sufficient by answer to say, that the lands belonged to such an abbey, &c. which was of such an order, and

and therefore by *St. 31 H. 8.* ought to be discharged, without more certainty. *R. Hard. 322.*

[If defendant answers that the manor was part of the possessions of the priors of *St. John of Jerusalem*, it is a good discharge. *Hanson v. Fielding, P. 1726. Bunb. 214.*]

[It is not sufficient to say the lands were formerly in the hands of the abbot of *A.* one of the greater monasteries dissolved by *31 H. 8.* it must say they were discharged in his hands. *Hanking v. Gay, in Sc. H. 1718. Bunb. 37.*]

It is sufficient if it says that the lands were, &c. were part of the bishop's palace, and therefore exempt; though he does not lay it personally in the bishop, (because the exemption goes with the lands) though it would be better to lay it by prescription. As to lands belonging to monasteries, they must set out how the prescription is. *Benning v. Dowie, in Sc. T. 1718. Bunb. 26.*

So, if a demand be of tithes by custom of things, for which none are due *de jure*, he need not answer to quantities or values if he denies the custom; for it is sufficient that he be examined upon interrogatories when the custom is tried. *R. Hard. 188.*

[It is not sufficient to set forth what titheable matters he has, and to say he had no other titheable matters whatever. *Bakor v. Planner, P. 1722. Bunb. 108.*]

[On a bill for tithe-wood, if defendant insists it was timber, the court will presume it was above 20 years growth, unless plaintiff prove the contrary. *Lloyd v. Mackworth, M. 1723. Bunb. 138.*]

So, Chancery will compel the payment of tithes. *2 Ca. Ch. 237. 1 Ca. Ch. 233.*

[This court never dismisses a bill for tithes, unless there is a good legal or equitable bar. *Douglas v. Vane, H. 19 G. 2. Wilf. 128.*]

A parson or impropriator, or his lessee, may exhibit a bill against the parishioners for discovery and payment of the single value of their tithes. *Vide 1 Ver. 60.*

[The owner and lessee of a rectory may bring a bill for tithe in kind, and so establish a custom of setting out in flocks, tho' there is a derivative lease in being. *Abp. of York v. Stapleton, H. 1740. 2 Atkyns 136.*]

So the executor of a parson, &c. may exhibit a bill for arrears in the time of his testator, without offering to take the single value; for he is not entitled to the penalty of the *St. 2 & 3 Ed. 6. 13. R. upon Demurrer. 1 Ver. 60.*

B b b

But

But the parson himself ought to make an offer to take the single value. *Semb. 1 Ver. 60. Vide Dismes, (M. 13.)*

But Chancery will not by a decree establish a modus, and that the land shall be discharged of tithes *in specie*, tho' there is a verdict for the modus. *Ca. Ch. 187. R. upon Demurrer, 1 Ch. R. 27.*

[If a bill is brought to establish a modus against the lessee of the impropiator, the impropiator must be a party also. *Glanvil v. Trelawney, in Sc. H. 1720. Bunb. 70.*]

[If a bill is brought to establish a modus, and on an issue directed, there is a verdict in favour of the modus, the court will establish it, and direct costs at law, but not in equity, to be paid to plaintiff. *Clifton v. Orchard, H. 1737. 1 Atkyns 610.*]

[If the modus is too rank (as 48*l.* per annum for the tithes of a manor, the whole demesne lands of which were worth but 48*l.* in queen Elizabeth's time) the court will decree tithes in kind. *Ekin v. Pigot, H. 1745. 3 Atkyns 298.*]

[Tho' a modus may appear something too rank, yet if there is no other objection to it in law, nor any evidence of tithes being paid in kind, this court will not direct payment in kind without an issue. *Chapman v. Smith, T. 1754. 2 Vezey 506. Ekins v. Dormer, T. 1747. 3 Atkyns 534.*]

[The court will not grant an injunction to stay proceedings in the ecclesiastical court, on a suggestion that there is a modus. *Rotheram v. Fanshaw, H. 1747. 3 Atkyns 628.*]

[Of late the court does not require the time of payment of a modus to be particularly laid, such a time or *thereabouts* is sufficient. *Carte v. Ball, P. 1747. 3 Atkyns 496. 1 Vezey 3. Richards v. Evans, 1 Vezey 39.*]

[But a custom must be substantially laid, therefore it must be alledged by whom a modus is to be paid. *Ibid.*]

[Setting up a modus does not preclude defendant from objecting to plaintiff's title to tithes. *Ibid.*]

[If the vicar be endowed *de omnib. minut. decim. inf. paroch.* he shall have a decree for tithes, after verdict found on issue directed, that none had ever been paid to him, nor to a third person out of A. *Fox v. Ratty, in Sc. M. 1721. Bunb. 87.*]

A grant from queen Mary, with the general words *decimas bladorum et fani, et omnes alias decimas*, are not sufficient to bar a rector of his common right of tithes, unless it is expressly stated what was the right of the crown. *Ekins v. Dormer, T. 1747. 3 Atkyns 534.*

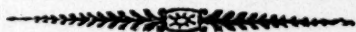
So, if a bill is filed in Chancery for the tithes and bounds of a parish, and the plaintiff after answer, exhibits a bill in the Exchequer, and there proceeds to the examination of witnesses, and then replies in Chancery; the proceedings and examination in the Exchequer may be pleaded against an examination for the same matter in Chancery. *R. Ca. Ch.* 233.

So, if the defendant has a verdict and judgment upon the *St.* 2 & 3 *Ed.* 6. 13. for not setting out tithes *in specie*, it may be pleaded to a bill brought for a modus. *R. Ch.* 13.

[This court has jurisdiction to enquire whether the lord mayor of London has done right in refusing to grant a warrant to levy a minister's dues, under *Stat.* 22 & 23 *C.* 2. c. 15. and if he has done wrong, to issue a warrant for levying the sum assessed. *Ex parte Croxall*, *P.* 1748. 3 *Atkyns* 639.]

[If the county in general is concerned in a tithe cause, (as Kent in a modus in Romney marsh) the court will order trial in another, (as London or Middlesex.) *Chapman v. Smith*, *T.* 1754. 2 *Vezey* 505.

[In Chancery an account of tithes shall be carried down to the time of the master's report, in the Exchequer to the time of filing the bill only. *Bell v. Reed*, *M.* 1747. 3 *Atkyns* 590.]



A BILL in Aid of *Evidence*.



To the Rt. Hon. and Hon. the Chancellor, Treasurer,
Lord Chief Baron, and the rest of the Barons of
his Majesty's Court of Exchequer in Ireland.

HUMBLY complaining, sheweth unto your lordships, your suppliant and daily orator B. T. of Waterford, in the county of the city of Waterford, esquire, his majesty's debtor and farmer, administrator of all and singular the goods, rights, credits and chattels of A. T. late of Waterford, in the county of the said city of Waterford, esquire, deceased. That W. E. late of Clonmel, in the kingdom of Ireland, deceased, did in his life-time by certain deeds of lease and release grant and convey unto J. K. late of Knockavelish, in the county of Waterford, gentleman, deceased, **ALL THAT AND THOSE** the town lands, tenements and hereditaments of Ballyhosky, otherwise Ballyhussa, otherwise Ballyhassey, otherwise Ballyhosly, and part of Newtown, containing by estimation three hundred and thirty seven acres, be the same more or less, situate in the barony of Decies, and county of Waterford, **TO HOLD** to him the said J. K. for ever, subject nevertheless to the yearly fee farm rent of fifty five pounds sterling: your suppliant further sheweth, that the said W. E. departed this life on or about the first day of January, one thousand seven hundred and eighty six, and since the decease of the said W. E. the legal estate of the said W. E. became vested in the said A. the brother of your suppliant: your suppliant further sheweth, that the said J. K. also died on or about the day of one thousand seven hundred and after his decease, the estate and interest of the said J. K. in the lands and premises before mentioned, descended to and became legally vested in his grandson L. K. late of the city of Dublin, gentleman, attorney at law, deceased, in consequence

consequence whereof your suppliant sheweth, that the said L. became subject to and liable to pay to the said T. in his life time the said yearly fee farm rent of fifty five pounds sterling, issuing out of the said lands and premises herein before mentioned ; your suppliant further sheweth, that the said L. K. became indebted to the said A. T. in his life-time in divers sums of money for arrears of the said rent due and payable to him, which though frequently demanded, the said L. under divers frivolous excuses, always declined to pay ; your suppliant further shews, that the said A. T. sometime in the year of our Lord, one thousand seven hundred and eighty eight, died intestate, and your suppliant B. T. the brother and heir at law of the said A. T. obtained administration in his majesty's court of prerogative in Ireland ; and your suppliant also shews, that the said L. K. on or about the day of in the year of our Lord, one thousand seven hundred and eighty seven, died intestate, and his widow M. K. the relict of the said L. K. obtained administration of the personal estate and fortune of the said L. K. and thereupon possessed herself of all the said K.'s personal estate, consisting in leases of houses, mortgages, ready money, plate, household-stuff, debts due upon bonds, bills and other specialties, and upon notes, and also possessed herself of all other the goods, chattels and effects of the said L. K. more than sufficient to pay off and discharge all the just debts of the said K. and a great overplus would remain after discharging all his just debts ; and your suppliant sheweth, that she also sold the said K's title to the said before mentioned lands for a considerable sum of money, all of which the said M. K. has converted to her own use ; your suppliant further expressly charges, that the said L. K. was in his life-time and at the time of his death seized and possessed of a good and sufficient estate in certain lands and premises, known by the name of Ballybolton, otherwise Ballyboden, in the county of Dublin, and also to certain other lands and premises known by the name of the lands of Clarkstown, in the said county of Dublin, which said premises. with the right, title and interest of the said L. K. therein, was, since his decease as aforesaid, sold and disposed of for a considerable sum of money by his widow the said M. K. who received such sum of money upon such sale, and converted the same to her own use ; your suppliant further sheweth, that so conscious was the said L. K. of his

his being considerably indebted to the said A. T. that he the said L. in his life-time furnished the said A. in his life-time with a stated account of receipts and payments made by him, and of the ballance which he then acknowledged to owe to the said A. and which ballance he then pretended amounted only to a sum of one hundred and thirty five pounds six shillings and six pence sterling, but your suppliant expressly charges, that the said L. K. included in the debit side of the said account against the said A. several sums of money which the said L. had not really, truly and fairly any right to charge the said A. but on the contrary, the said L. was fully and truly indebted to the said A. at the time of his decease, in a net ballance of a sum of four hundred and nineteen pounds eighteen shillings sterling, of which the said M. since the death of the said L. K. and A. T. had often notice from your suppliant; your suppliant further charges, that your suppliant since the decease of the said A. T. and L. K. has made and caused to be made repeated applications to the said M. K. to discharge the said sum so due as aforesaid, to him as executor of the said A. and also as of this present Easter term did commence his suit or action at law for recovery of said demand in the plea side of his majesty's court of Exchequer in this kingdom, notwithstanding which she has declined to pay the same, untruly alledging that she has not assets in her hands sufficient to pay off and discharge the same, although the said M. well knows and is convinced in her conscience, that the said sum of four hundred and nineteen pounds eighteen shillings sterling is justly and fairly due to your suppliant as personal representative of the said A. T. and that your suppliant is well entitled to receive the same; and your suppliant charges, as the truth and fact is, that the said M. is possessed of assets considerably more than would discharge the said debt, or any other debts due by the said L. K. at the time of his decease. BUT NOW SO IT IS, may it please your lordships, that the said M. P. combining and confederating to and with divers other persons to your suppliant unknown, but whose names when discovered your suppliant prays leave to add hereto, and they to be made parties to this your suppliant's bill, with apt words to charge them how to injure, oppress and defraud your suppliant in the premises, still persists in refusing to pay the remaining part of said debt, and still continues

to give out, contrary to the truth, that the funeral expences and other debts of the said L. K. paid by her since his decease, amounted to the whole of what assets reached her hands, and at other times the said M. says there are various other debts prior to this of your suppliant's which she must discharge, and at other times the said M. says there are various other debts due to her as representative of the said L. K. which she has not yet been able to call in and receive, and at other times she puts off your suppliant with divers frivolous excuses, promising to settle accounts at several different times, but afterwards neglecting and refusing to perform such promises; ALL WHICH ACTINGS AND DOINGS of the said confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your suppliant, and render him less able to pay the debts which he, as personal representative of the said A. T. owes to his majesty at the receipt of this honorable court. *In tender consideration whereof*, and forasmuch as your suppliant is remediless in the premises by the strict rules of the common law, and only relievable in a court of equity, where matters of fraud, account and oppression are properly cognizable before your lordships, and to be relieved, and the rather for that your suppliant's witnesses, who could prove the truth of all and singular the premises, are either dead or dispersed in foreign parts beyond the seas, so that your suppliant could not have the benefit of their testimony at any trial intended to be had at law as aforesaid, and inasmuch as your suppliant cannot prove the justice and truth of said demand before a court of law so as to charge her therewith, unless in a court of equity where your suppliant will be entitled to the oath of the party: **TO THE END THEREFORE** that your suppliant may be relieved in the premises according to equity and good conscience, and that the said M. K. and her confederates when discovered, may upon their several corporal oaths to be by them respectively taken on the Holy Evangelists, true, full, perfect and distinct answers make, as well to their own knowledge as to their hearsay and belief, to all and singular the premises, as fully and particularly as if the same were herein again repeated, and they particularly interrogated thereto paragraph by paragraph, more especially that they and each of them may set forth and discover whether the said W. E. did not in manner as herein before for that purpose mentioned

mentioned, or how otherwise, grant, demise and set unto the before named I. K. the several lands and premises herein before mentioned, or how otherwise, is not the said W. E. now dead, and when did he die, and did not the legal estate and interest of the said E. in said premises descend to and become legally vested in the before named A. T. or any other person and whom; is not the said I. K. now dead, and when did he die, and did not his estate and interest become legally vested or how otherwise in L. K. the husband of the said M. or any other person and whom, or how otherwise, was not the said L. as tenant to the said lands, chargeable with the said fee farm rent of fifty five pounds, or any other and what rent payable out of the same to the said A. T. in his life-time, or any other person and whom, and did not the said L. in his life-time suffer the said yearly rent to run considerably in arrear, and was he not at the time of his decease indebted therefore to the said A. T. in his life-time to the amount of four hundred and nineteen pounds eighteen shillings sterling, or any other and what sum, or how otherwise, is not the said L. K. now dead, and when did he die, did not the said L. die intestate, or how otherwise, and did not the said M. or any other person and whom, obtain letters of administration to the said personal estate, goods, rights, credits and chattels of the said L. K. and did not the said M. in consequence thereof, possess herself of all the personal estate, effects and substance of the said L. K. to a considerable or any and what amount, or how otherwise, and who is now in possession of the estate, effects and substance of the said L. and what was the amount and value of the real and personal estate and substance whereof the said L. died possessed or entitled unto, and what did the debts due by the said L. amount to at the time of his decease, and to whom was he so indebted, and in what sums respectively, did not the said M. possess herself of the said estate and substance of the said L. to a considerable amount, more than sufficient, and how much more than sufficient, to pay off and discharge all the just debts of the said K. or to what amount in value did she so possess herself of the said L.'s estate, property or effects, did the said M. since the decease of the said L. pay any and what debts, and to whom, and to what amount respectively, and when did she pay the same, was not the said L. K. in his life-time and at the time

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of his death, seized, possessed of, and entitled to an interest as aforesaid, or how otherwise, in the said herein before mentioned lands of Ballyhussa and part of Newtown as aforesaid, in the said county of Waterford, or how otherwise, and was he not also possessed of the herein before mentioned lands and premises of Clarkstown and Ballybolton otherwise Ballyboden, or how otherwise, and what was the amount in value of the said several lands and premises respectively at the time of the decease of the said L. and how, and to whom, and by whom have they been since sold and disposed of, and for what sum, and to whom was such sum paid or payable, and what person or persons are now in possession of the said last mentioned lands and premises particularly, and of the rents, issues and profits thereof, and what is the amount of the same, and yearly value thereof, is not the said A. T. now dead, and when did he die, did he not die intestate, and did not the said B. T. duly take out administration thereof, and did not the said L. in his life-time and before the death of the said A. furnish the said A. or cause him to be furnished by any person, and whom, with an account in writing of certain receipts and payments made to and by him on account of the said A. and did he not therein and thereby acknowledge himself to be justly indebted to the said A. in a sum of one hundred and thirty five pounds six shillings and six pence sterling, or any other and what sum, did not the said L. in the debit side of the said account against the said A. charge several sums of money, the legality whereof was disputed by the said A. in his life-time and by your suppliant since his decease, and doth not the said M. know or hath she not heard, and doth she not believe, that at the time of the decease of the said A. the said L. K. was indebted unto him upon a fair and just settlement of accounts, in the full sum of three hundred and seven pounds six shillings and six pence sterling, or any other and what sum particularly, is not the said M. as representative of the said L. accountable to your suppliant as personal representative of the said A. for the same, hath not the said M. under various pretences as aforesaid, hitherto refused to settle with your suppliant for the said demand, or to pay or in any manner to satisfy him for the same, and why doth she refuse so to do, hath not the said M. since the death of the said L. sold or disposed of the property, effects and substance of the

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said

said L. to any and what amount, and did she not dispose thereof, and apply the same to her own use, or any other and what use or uses, in any and what manner; and that the said M. may, before she answers view in the hands of your suppliant's agent or complainant, as the case may be the before mentioned account so furnished to the said A. by the said M. K. in his life-time, and endorse her name thereon or on the back thereon; and that the said M. may in her answer to this your suppliant's bill, fully and truly declare whether the said paper writing purporting to be the account between the said B. T. and the said L. K. is not the proper hand-writing of the said L. or of what other person, and by whose directions, and when made, to the knowledge, hearsay or belief of the said M.; and to the further end that the said M. K. as personal representative of the said L. may true, full, perfect and distinct answers make upon her oath to these several interrogatories and allegations, and that your suppliant may receive the full benefit thereof upon any trial for the afore said sum so due by the said M. as above described to be had, and that this bill may be taken and deemed a bill for discovery of evidence, only to be used upon such trial, and that your suppliant may have the benefit of the same accordingly; may it therefore please your lordships to grant unto your suppliant his majesty's most gracious writ of subpoena to answer, to be directed to the said M. K. requiring and commanding her at a certain day and under a certain pain to be therein limited, personally to be and appear before your lordships in this honorable court, then and there true, full, perfect and distinct answers to make to all and singular the premises, as well to her knowledge as to her credible hearsay and belief, and your suppliant will pray.

The END of the FIRST VOLUME.

Ex. J. J.

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